United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

BRIEF FOR APPELLANT AND JOINT APPENDIX

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

No. 20,390

EUNICE JANOUSEK

Appellant

v.

WELDON A. PRICE
RICHARD W. GALIHER
HERBERT M. NEYLAND

Appellees

Appeal From The United States District Court

For The District Of Columbia

EUNICE JANOUSEK
Appellant, In Proper Person
284 Benjamin Franklin Station
Washington, D. C.

INDEX

STATUTES

CASES

STATEMENT OF QUESTIONS PRESENTED

The appeal asks reversal of two District Court orders, entered on June 13 and 28, 1966, for the following reasons in which the questions presented appear:

The order of June 13th contravenes the decisions of this Court on long-settled principles of law governing liens and rights under them.

The order of June 13th is in conflict with a prior District Court order adjudicating identical questions between the same parties on August 26, 1965, which were, on June 13, 1966, res judicata.

The order of June 13th is further in error as by the judgment-debtor appellee's (Weldon A. Price) contentions, and the Court's ruling and order on them, the sum paid the appellant on September 1, 1965 was paid in consideration for a contract in which she agreed to stay execution, and the sum was therefore not a payment on her judgment.

The order of June 28, 1966, staying and enjoining appellant from executing on her judgment, based on the stay contract, is in error as it extends the stay and restrains and enjoins appellant from executing for a period that is beyond the terms of the stay contract.

UNITED STATES COURT OF APPEALS

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BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

The appealed order of June 13, 1966, inconsistently made in conflict with other orders and proceedings below, and standing in contravention of this Court's rulings and decisions, is a final order and this Court has jurisdiction of the appeal under Title 28 U. S. C. § 1291.

The appealed order of June 28, 1966 is an interlocutory order staying and enjoining appellant from collecting her judgment, and this Court has jurisdiction of the appeal under Title 28 U. S. C. §1292(a)(1).

STATEMENT OF CASE

I

Appellant, who is not an attorney, is prosecuting this appeal in proper person.

Notice of appeal was filed in the District Court on July 12th. On August 12th the appeal was docketed in this Court.[1/] The fortieth day following is September 21, 1966.

In order to comply with the Rules, appellant files this brief within the forty day period. But it is, unavoidably, incomplete and takes up only partially her points on appeal. It has been impossible to develop the points sufficiently, or the issues of law and appellant's position and discussion of them. For this is a brief written without the indispensable transcript of the oral hearing and proceedings on the motions underlying the orders appealed.

With this brief appellant is, therefore, filing a separate motion for an order authorizing her to file a supplemental brief within thirty days of the date the stenographic transcript of the motions proceedings (or a statement of those proceedings, as provided by Rule 75(c) F.R.C.P., if the stenographic transcript continues, as it has all summer, to be unavailable) is filed in this Court.

The motion and request to file a supplemental brief are necessitated by and have grown out of these facts and developments:

On September 2, 1966 appellant filed a motion in this Court asking transmittal of a supplemental record and to extend the time for filing her brief until the record is received. It indicates, in very brief and partial outline, some of the difficulties encountered, beginning early last June and continuing since, in her endeavor to obtain and have included in the record the stenographic transcript ordered of the reporter last June. And as stated, her efforts have been constant and persistent since, her inquiries numerous, her telephone calls many--some by long distance--trying to obtain the record ordered, yet not transcribed or

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1/ Appellant's statement of points on appeal and record to be printed were filed on August 22nd.

filed in the District Court when the lower court records and appeal were docketed on August 12th; a transcript which, to the date of this brief, continues unfulfilled and not filed.

Having through her efforts managed to learn that the reporter concerned had resigned and left Washington (court personnel also obtained and gave appellant his home telephone number where the response was an "out of service" message by the telephone company), appellant in her motion of September 2nd asks that she be given about thirty days to obtain either the transcript or to file a statement of the proceedings in the District Court (as provided by Federal Rule 75(c) in instances of unavailable records). And in the pending motion appellant moves for an order directing transmittal of the supplemental record and extending the time for filing appellant's brief to October 31st to afford her the time to complete her brief after the transcript, or the statement in conformity with Rule 75(c) is secured.

The motion is unopposed.

On September 16th, with but five days remaining of the forty days within which appellant's brief is due, appellant discussed the fact with the Court's Chief Deputy Clerk, Mr. Stevas, who informs her that the Court is six weeks or more behind on motions and states there can be no ruling on appellant's pending motion before September 21st, when her brief is due, but that he believes appellant would be given forty days from the date the supplemental record is filed in this Court within which to file her brief.

In these circumstances, to effect compliance with the Court's Rules, appellant herewith files her brief within the forty day period, stating that it is prepared without benefit of the transcript of the hearings, and under these limiting and disadvantageous conditions it cannot and does not present fully her appeal.

II

By an assignment on April 30, 1964, the appellant, Eunice Janousek, became successor in interest and acquired full ownership of her predecessor's rights, his ownership in and attorney's lien on the $100,000 judgment herein against the judgment-debtor appellee, Weldon A. Price.

The appellant on January 6, 1965 filed the assignment in the District Court along with her motion to be substituted as the party in interest. (J.A. 1G) The substitution was made and the Court's order directing it was entered on January 22, 1965. (J.A. 1H)

Among other incidents of her rights and ownership, the appellant by the assignment and order of substitution became the lienor in interest on a pending petition to enforce an attorney's lien, previously filed by her predecessor, Mr. Joseph O. Janousek, which was then awaiting hearing and adjudication in the District Court. (J.A. 1E) 2/

2/ As shown by the petition and subsequent evidence, appellant's predecessor, Mr. Janousek, was the attorney for the Neylands from the inception of their inquiries on a possible claim of malpractice against Dr. Price and others, on which they consulted Mr. Janousek in early 1956, on through the affirmance of the malpractice judgment against Dr. Price by this Court in May 1963; and he continued as their attorney until July 1963 when, having brought Dr. Price's insurer (then in dispute with him on the insurance coverage) to the point of paying about $80,000 on the judgments and interest, Mr. Janousek received a letter, signed by Neyland, discharging him as attorney. Mr. Janousek was later informed that shortly before his receipt of the letter Neyland had also attempted to have the insurer pay the funds directly to him, to the exclusion of Mr. Janousek. Confronted by these manipulations and Neyland's breach of the contingent fee contract under which all of the work had been performed since 1956, Mr. Janousek filed his petition to enforce his attorney's lien in the District Court in August 1963. (J.A. 1E)

Mr. Janousek is the author of the now standard medico-legal text on malpractice in blood diseases of infancy: Malpractice: Blood Incompatibility In The Newborn, in AMERICAN JURISPRUDENCE PROOF OF FACTS, Vol. 15.

(footnote continued on page 5)

The petition to enforce the attorney's lien was heard in March 1965. Evidence, including appellant's testimony, was taken and at the hearing's conclusion the Court made its adjudication, finding that the ownership of Eunice Janousek was twenty percent of the amount of the judgment. 3/ An order which establishes appellant's ownership at twenty percent was entered on April 5, 1965. (J.A. 1F)

As of the date of that order there continued unpaid on the $100,000 judgment the sum of $50,000, plus accrued interest from July 1963. Appellant's twenty percent of the judgment, which continues unpaid, is $10,000, plus interest

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(2/ continued)

And as is shown by the petition and supporting evidence, Mr. Janousek, after more than eight months of investigation and intensive work on the scientific aspects of a tenuous claim (which included his obtaining new and impartial pre-litigation blood examinations on the injured child and its mother, and pre-litigation access to hospital and medical records concerning mother and child, and numerous consultations spent in study of the claim with obstetricians, pediatricians, blood pathologists and laboratory experts in various sections of the United States) was able to file the complaint, in behalf of Neylands against Dr. Price and others, in the District Court on October 25, 1956. Subsequently, through the arduous course of his further medical, pretrial and trial preparation, through the trial and the appeal of the malpractice judgment taken by Dr. Price to this Court, Mr. Janousek worked with some of Europe's leading blood pathologists whose support he had on the theory of medical liability he had developed and on which he had filed the action and was prosecuting the claims. Mr. Janousek wrote the Brief for the Appellees filed in this Court as well as the Opposition to the Petition for Rehearing.

In late December 1961 Mr. Janousek employed and brought Richard W. Galiher (who was unacquainted with Mr. Janousek's clients) into his case as an associate attorney. The letter signed by Neyland, discharging Mr. Janousek as his attorney in July 1963 in breach of the contingent fee contract made in 1965, was mailed in the envelope of Galiher & Stewart. Almost simultaneously Richard W. Galiher informed Mr. Janousek that he now represented the Neylands.

3/ The petition for the enforcement of the attorney's lien, and the hearing proceeding and adjudication on it in the District Court, followed this Court's directives and rulings in Falcone v. Hall, (1956), 98 U.S. App. D.C. 363, 235 F2d 860, and this Court's earlier decisions on the subject.

accrued and unpaid since July 1963.

Unavailingly appellant first tried to obtain the cooperation of the judgment debtor Price to voluntarily pay, or make some arrangement to pay, the judgment and interest he owes her. This failing, she began to execute on her judgment but was immediately met by the judgment debtor's "resistance" of its payment. 4/

On April 8, 1965 appellant filed interrogatories, directed to the judgment debtor, in aid of execution under Federal Rule 69. (J. A. 1I) He filed a "motion to quash interrogatories and/or suspend answers to interrogatories" stating that "the interrogatories propounded by the attorney lienor do not include the principal plaintiffs," insisting appellant could not proceed with the collection. (J. A. 1J) However, before the motion came on for hearing Anthony J. Siciliano called the appellant stating that if she would withdraw the interrogatories Dr. Price would arrange to pay the judgment owed her. Appellant agreed, the interrogatories were withdrawn. (J. A. 2A) Dr. Price and his attorneys then backed out of their assurance of payment and refused to make any payment on or discuss payment of the judgment.

On July 2, 1965 appellant served and filed a notice to take the deposition of

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4/ This has been a persistent, unending effort by Dr. Price and his attorneys since 1962 when he refused to post a supersedeas bond in any amount while his appeal of the malpractice judgment was pending, when his insurer contended it could not arrange to put up the bond because of Dr. Price's refusal to sign necessary papers, and when Dr. Price, through his attorney Anthony J. Siciliano, defiantly declared he would "resist" execution proceedings and payment of the judgment. The record in the District Court has since grown replete with the "resistance" of payment, including successive motions, variously titled "to quash," "to stay," "for a protective order," etc., filed each time any effort has been made to interrogate him on or reach his assets in aid of execution, as provided by Rule 69 of the Federal Rules of Civil Procedure. (J. A. 1A, 1B, 1C, 1I, 1J, 1K, 2B, 2C, 2D, 2E, 2F, 2G, 2H, 2J, 2K, 3A, 3B, 3F, 3G, 3I, 3J, 3K, 3L, 3M)

Dr. Price, in aid of execution under Federal Rule 69, on July 9th (J.A. 2B) On July 7th the judgment debtor Price filed a "motion to dismiss, terminate and/or suspend the taking of deposition on oral examination." (J.A. 2C) On July 23rd appellant filed and served a motion to require production of the judgment debtor's financial records. (J.A. 2E) Opposition was filed to this motion. (J.A. 2F) The judgment debtor, both in his "motion to dismiss, etc.," the notice of deposition and in his opposition to the production of his financial records contended, among other specious assertions, that appellant had no standing or interest, that she had no judgment or independent right to execute on the judgment and that her right, if any, was subordinate to Neyland's. The attorneys for the judgment debtor cited no authority whatever on these assertions. Appellant filed detailed legal memorandums showing that all were baseless and disregarded this Court's decisions which are directly to the contrary. Copies of all the memorandums and motions, as well as the Clerk's notification that they were coming on for hearing before Judge William B. Jones on August 26, 1965, were served on Richard W. Galiher. (J.A. 2B through 2H)

In the argument before Judge Jones the judgment debtor's attorney again insisted that the appellant had no judgment, that she had no independent right to execute on the judgment, that she had no legal standing, and that her interest, if any at all, was subordinate to and dependent upon the will and decision of Herbert M. Neyland who had told the judgment debtor that he did not wish to execute on or collect the judgment.

Judge Jones overruled each of the contentions, denied the motion of the judgment debtor "to dismiss, terminate and/or suspend the taking of deposition on oral examination" and directed the attorney who had appeared for the judgment

debtor Price to have him in the courtroom that afternoon at one o'clock. It was later arranged that Dr. Price would appear for his deposition on September 1, 1965. The Court then entered its order, on August 26, 1965, denying the judgment debtor's motion and ordering him to appear for deposition examination on September 1st at 10:00 a. m. (J. A. 2I) On August 26th the Judge in denying appellant's motion for production of Dr. Price's financial records stated he was doing so as he felt the proper course of obtaining them was by subpoena.

III

On September 1, 1965 the appellant received the sum of $7, 250 from Dr. Price and consented to his request to put his deposition over and to withhold further execution on her judgment until he had brought his case against his insurer, the Aetna Casualty Company, then on appeal in the Virginia Supreme Court of Appeals, to conclusion. Believing that Dr. Price intended the payment as a payment on her judgment and accrued interest, appellant gave him a receipt to this effect. (J. A. 2K, Exhibit; and 3J Exhibit A) 5/

The case referred to in the receipt, Aetna Casualty Co. v. Price, was decided by the Virginia appellate court, and terminated by a reversal and entry of final judgment for Aetna, on January 17, 1966, reported in 146 S. E. 2d 220.

Thereafter, Dr. Price having again refused to pay on appellant's judgment, it became necessary for her to resume execution and the deposition which had

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5/ But several months later, in the motions proceedings before Judge Holtzoff (which resulted in the two orders now on appeal), Dr. Price and his attorneys took the position and insisted, however, that the receipt was in fact a contract by which appellant had agreed with Dr. Price to stay execution on her judgment, and they made the $7, 250 the consideration supporting the stay contract, and not a payment on appellant's judgment; and they attempted to extend the stay beyond the term of the single case named, in the document appellant gave Dr. Price, namely, Aetna Casualty Co. v. Price which was in the Virginia Supreme

(footnote continued on page 9)

been continued over on September 1, 1965, and she served, on April 7, 1966, a notice for the judgment debtor's deposition. Dr. Price filed two motions "for a protective order," attaching to both the document appellant had delivered to him on September 1, 1965, pleading it as a contract to stay execution, and asked that appellant be stayed and enjoined by it from taking the deposition and executing on the judgment. (J.A. 2K, 3J)

On May 2, 1966 Richard W. Galiher also filed for himself and Herbert M. Neyland a "motion to require payment of moneys," (J.A. 3C) asserting and again attempting to say that appellant had no independent judgment or independent right to collect the judgment [6/] -- repetitious contentions identical to those made in the judgment debtor Price's motion filed in July 1965 (referred to on pages 7 and 8 of this brief) which had been rejected by Judge Jones in his ruling

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(5/ continued)

Court of Appeals on September 1, 1965.

The judgment debtor's two motions "for a protective order," his memorandum filed with the Court, the argument of the motions before Judge Holtzoff, the affidavit filed by one of his attorneys, as well as later correspondence with Judge Holtzoff on the form of the order, all exhibit the judgment debtor's repeated and emphatic insistence that the appellant made and is bound by a contract in which she agreed to stay execution, and that his payment of $7,250 was, accordingly, in consideration for that contract and was not a payment on the judgment. (J.A. 2C, 2F, 2H, 2K, 3A, 3F, 3J, 3K, 3L, 4A)

Judge Holtzoff accepted the judgment debtor's insistence appearing in the record and accepted the similar argument of his attorneys, finding that appellant had made a legally valid and binding contract with Dr. Price to stay execution on her judgment, and upon that contract he entered the order of June 28, 1966, staying and enjoining appellant from executing on her judgment. (J.A. 3O)

6/ He went beyond this in the courtroom. After Judge Holtzoff had refused appellant the right to argue her position or the law, and declined to examine the legal memorandums in the file before him, he asked Richard W. Galiher what the appellant's rights and interests in the case were. To this Richard W. Galiher replied, "None whatsoever."

and order of August 26, 1965, and were on May 2, 1966 res judicata.

The above motions by the judgment debtor and Richard W. Galiher came before Judge Holtzoff for argument on June 2, 1966. As appellant arose to argue Judge Holtzoff announced that while appellant had a Constitutional right to appear in proper person he disapproved of that right. Later he told her he would not permit a "lay person" to read law in his court. He refused to let appellant refer to the applicable cases and prohibited her from arguing them in opposition to the motions before him. Though appellant was at all times very courteous, very respectful and fully deferred to the Court's adamancy in refusing to hear her argument and the applicable cases she wished to bring to his consideration, she did attempt, upon being silenced, to refer to Title 28 U.S.C. §1654, which appears to entitle parties to conduct their cases in the Federal courts. But before she could do so the Court warned her that if she attempted to speak further he would instruct the Marshal to escort her from the courtroom.

Then, after hearing the opposing attorneys in full (who made representations entirely at variance with the record before the Court), the Court granted the Galiher-Neyland motion "to require payment of moneys." The Judge indicated he would also stay the appellant from executing on the judgment on the stay contract which the attorney for the judgment debtor relied on; but the Court inquired of that attorney what cases there were besides the one referred to in the contract of September 1, 1965, upon which the Court should enjoin the judgment creditor from executing. The attorney was unable to give the names of any cases, or any other information beyond a vague assertion that there were cases pending in the Virginia courts. The Judge gave the attorney several days

to file an affidavit giving the names and details of such cases that extended the period of the stay contract made on September 1, 1965.

In his affidavit filed several days later (J. A. 3L) the attorney listed several cases he asserted were then pending in the Circuit Court of Arlington. One had not even been filed, or in existence, on September 1, 1965; others stood on the record awaiting formal dismissal, having been rendered of no further legal validity by the decision in Aetna Casualty Co. v. Price, on January 17, 1966, in the Virginia Supreme Court of Appeals. These facts were pointed out to the Judge. (J. A. 4A) A stay order enjoining appellant from executing on her judgment, reciting some of the cases given in the affidavit as the term of the stay contract and the term of the order enjoining appellant from execution proceedings, was presented to the Court and objected to by the appellant. (J. A. 4A)

The order granting the motion "to require payment of moneys" was entered on June 13th. (J. A. 3N) The order granting the judgment debtor's motions, staying judgment execution by the appellant, was entered on June 28, 1966. (J. A. 3O) Notice of appeal on both was filed on July 12, 1966. (J. A. 4B)

STATEMENT OF POINTS

I. The order of June 13, 1966 contravenes the decisions of this Court on long-settled principles of law, and disregards an earlier District Court order, entered on August 26, 1965, rejecting identical contentions to those made in the motion underlying the order of June 13, 1966, all of which have been res judicata since August 26, 1965.

II. The order of June 13, 1966 is further in error as by the judgment debtor's contentions in his motion and argument to stay execution, and the Court's ruling and order entered on those contentions, the sum of $7,250 paid the

appellant on September 1, 1965 was paid in consideration for her contract with the judgment debtor to stay execution and was not a payment on the judgment.

III. The order of June 28, 1966, entered on the contract to stay execution, is in error: The contract to stay execution offered and pleaded by the judgment debtor is by its terms limited to the period of Aetna Casualty Co. v. Weldon A. Price, which was on appeal in the Virginia Supreme Court of Appeals when the stay contract was made on September 1, 1965. That case terminated on January 17, 1966 by decision and final judgment, as reported in Aetna v. Price, 164 S.E. 2d 220.

IV. The order of June 28, 1966, entered on the contract to stay execution and enjoining appellant from proceeding with execution, is further in error: The order extends the term of the stay to conglomerate Virginia cases which were neither recited in the stay contract nor within the contemplation of the parties when the contract was made on September 1, 1965; and the decision of the Virginia appellate court on January 17, 1966 disposed of the various cases Dr. Price had filed in the Arlington Court.

V. The District Judge's refusal to permit appellant to conduct her own case and to submit to him the cases and law which she was prepared to offer in support of her position is error and contrary to the provisions of Title 28 U. S. C. §1654 and guarantees implicit in the Constitution of the United States.

SUMMARY OF ARGUMENT

By an adjudication on the petition to enforce an attorney's lien and the order vesting appellant with twenty percent ownership in the judgment, she has, in accordance with the decisions of this Court, an independent judgment and a right to collect her judgment independently without interference from other parties.

The order of June 13, 1966 disregards these rights of the appellant and is contrary to the decisions of this Court. The order of June 13th, requiring payment of money received by the appellant on an agreement to stay execution, is in error for other reasons as well. For by the rulings and order of June 28, 1966, enjoining appellant from executing on her judgment because of a stay contract, the Court accepted and confirmed the judgment debtor's contentions that a stay contract existed and the $7, 250 paid was in consideration for the contract and not a payment on the judgment. The term of the stay contract pleaded by the judgment debtor and enforced by the Court was limited to the single case of Weldon A. Price v. Aetna Casualty Company, on September 1, 1965 on appeal as Aetna Casualty Company v. Price in the Virginia Supreme Court of Appeals and concluded by that court's decision on January 17, 1966. The District Judge's refusal to allow appellant to conduct her own case and his denial of her right to do so and present legal authorities and argument is error.

ARGUMENT

I

As related in the Statement of the Case, appellant's interest in the judgment in the case has been established at twenty percent. Her judgment in this amount has been established in just the manner this Court has on several occasions in the past directed; namely, by a petition to enforce an attorney's lien, by a hearing and determination made by the District Court to fix the amount due under the lien. All directives of this Court were meticulously followed in the lien proceeding.

It was an adversary proceeding. The Neylands were served with the petition to enforce the lien, all notices, etc. Herbert M. Neyland appeared at the hearing on the petition, represented by Richard W. Galiher. Testimony was taken. The

matter was argued, the Court made its findings and by order established the appellant's ownership at twenty percent of the judgment.

The appellant is, of course, the assignee of the attorney who represented the Neylands under a contingent fee contract, who suffered their breach of it in attempted avoidance of the compensation due him, and who filed his petition to enforce the lien in protection of his interest.

The appellant succeeded to the attorney's rights in 1964 under the assignment; and based upon that assignment the District Court in early 1965 by order substituted the appellant as the party in interest.

This Court has ruled, frequently in the past and more recently in Falcone v. Hall (1956), 98 U.S. App.D.C. 363, 235 F2d 860, that the possessor of a lien and judgment whose amount has been fixed by a proceeding on the lien in the District Court, has an independent interest and judgment and has the right to proceed indepndently, either in his own name or in the name of the former client, to satisfy the amount due him.

In this instance the District Court order, of course, establishes appellant's twenty percent ownership in her own name and she has since proceeded in her name in her efforts -- constantly obstructed by meritless motions, as the District Court records show -- to execute on and satisfy the twenty percent of the judgment and accrued interest which is hers. In these efforts she is following -- and is fully supported by -- this Court's decisions and rulings in the following cases, among others: Falcone v. Hall, supra; Sullivan v. Tobin, (1914), 42 App. D.C. 430; Kellogg v. Winchell, (1921), 51 App. D.C. 17; Continental Casualty Co. v. Kelly, (1939), 70 App. D.C. 320, 106 F2d 841; Friedman v. Harris, (1946), 81 U.S. App. D.C. 317, 158 F2d 187. Also: Barnes v. Alexander, (1914), 232 U.S. 117.

Dr. Price's motion, which was heard by Judge Jones on August 26, 1965, contended that appellant had no right whatever in the judgment, much less an independent right to collect it; they contended that Messrs. Neyland and Galiher were the only persons who could go forward with the collection -- and they did not wish to do so. In fact, the attorney who appeared for Dr. Price that day informed the Court that Messrs Galiher and Neyland (who had been served with the motion and appellant's opposition, and who had been notified of the hearing set for August 26th, but who were not in court) supported Dr. Price in his motion which had moved to quash and prevent appellant's taking of his deposition in aid of execution. As the attorney for the judgment debtor Price argued each of his points in the motion, the Court rejected each. At conclusion of his argument the Court denied the motion, then directed the attorney to have Dr. Price in the courtroom at one o'clock that afternoon. The attorney made telephone calls then came again before the Court and assured the Court that Dr. Price would appear for his deposition as the Court directed. The Court, in the order denying the judgment debtor's motion, directed him to appear for his deposition on September 1, 1965.

The Galiher-Neyland motion, heard and granted by Judge Holtzoff and whose order on it is now before this Court on appeal, takes identically the tack of Dr. Price's motion in 1965 which they supported at that time. It contends and takes the position that appellant has no interest whatever, much less a right to collect independently the amount due her. It attempts to reinject in issue and reargue the same contentions which were rejected by the Court on August 26, 1965, which were res judicata by the order of August 26th. In granting the Galiher-Neyland motion the Court has also disregarded this fact, entering the

order of June 13, 1966 in further error in these circumstances.

II

Further, the order on the Galiher-Neyland motion requires the payment of money by the appellant which was not made to her as a payment on the judgment. For the judgment debtor contended, and the Court found on those contentions, that appellant had made a legally binding contract agreeing to stay execution on the judgment, rendering the $7,250 paid the consideration for the contract, and not a payment on the judgment.

No contract staying execution is valid unless supported by an independent consideration; payment on the judgment due does not support or form consideration for the agreement; for by paying the judgment, or any part of it, the judgment debtor is only doing what he is already legally bound to do.

Appellant is unable to argue this point further without the transcript of the motions proceeding. She is filing a motion to file a supplemental brief when that transcript, or a statement of the proceedings, is filed in this Court as a supplemental record. She respectfully states that she wishes to argue this point further at that time.

III and IV

Beyond what has already been related in the Statement of the Case, appellant is unable to argue or adequately present these points without the transcript of the proceedings before Judge Holtzoff. She has already stated that she is moving for an order allowing her to file a supplemental brief, and she respectfully requests that it be allowed so that she may present these points on appeal.

V

Appellant also respectfully requests further argument on this point when a supplemental record with the transcript of the hearings before Judge Holtzoff

is before this Court. In the meantime appellant states that she was not accorded the right to argue the law on her position and in opposition to the motions, and that she was not permitted to conduct her case personally and that the Court was in error in refusing her that right:

> 28 U.S.C. §1654 - In all courts of the United States the parties may plead and conduct their own cases personally or by counsel, as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

The Judge's error in this regard, by which appellant was completely silenced and the two attorneys were allowed to go on at some length, making statements which were in utter conflict and at variance with the record -- erroneous statements upon which the Court acted in error -- has not only proved extremely prejudicial to the appellant, but has in great part contributed to the entry in error of the two orders which have necessitated this appeal. Appellant respectfully states that she desires to present further argument on this point in the supplemental brief she requests.

CONCLUSION

In accordance with her motion being separately filed, appellant respectfully requests that she be allowed to file a supplemental brief when the supplemental record containing the transcript of the motions hearings, or a statement thereof, has been transmitted to this Court; and that upon consideration of this appeal the orders of June 13th and 28th, 1966 be reversed and vacated.

Respectfully submitted,

EUNICE JANOUSEK
Appellant, In Proper Person
284 Benjamin Franklin Station
Washington, D. C.

JOINT APPENDIX *

Joint Appendix Reference	Filing Date In Record	Title In Record
1A	Aug. 1962	Interrogatories to judgment debtor.
1B	Sep. 21, 1962	Motion to quash interrogatories.
1C	Oct. 1962	Points and authorities in opposition to motion to quash interrogatories.
1D	Nov. 16, 1962	Answers to interrogatories.
1E	Aug. 23, 1963	Petition to enforce attorney's lien (by Joseph O. Janousek).
1F	Apr. 5, 1965	Order (on petition to enforce attorney's lien, following hearing and adjudication).
1G	Jan. 6, 1965	Motion for substitution of assignee; Exhibit A: Assignment.
1H	Jan. 22, 1965	Order substituting party.
1I	Apr. 8, 1965	Interrogatories to judgment debtor under Rule 69, F.R.C.P.
1J	Apr. 14, 1965	Motion to quash interrogatories and/or suspend answers to interrogatories; memorandum in opposition to interrogatories.
1K	Apr. 20, 1965	Points and Authorities in opposition to motion to quash interrogatories etc.
1L	June 10, 1965	Praecipe withdrawing motion to quash interrogatories.

Note on Joint Appendix: Since the filing of appellant's typewritten brief on September 21st, but before printing of the brief was completed, the Court granted a pending motion of appellant's and has by its order directed the Clerk of the District Court to transmit the supplemental record appellant had requested, and extends the time for filing her brief to October 31st. To adhere to this Court's Rule 16(i) that unnecessary matter shall not be printed, appellant wishes to avoid duplication in the appendices of this brief in printed format and the brief she will file on or before October 31st. Thus references in this brief and joint appendix are to pleadings and documents in the District Court records now before the Court of Appeals. In the brief appellant will file on or before October 31, 1966, the joint appendix will contain the essential parts of the record in printed form. Besides avoiding unnecessary printing, appellant believes this will better serve the Court's convenience.

Joint Appendix Reference	Filing Date In Record	Title In Record
2A	June 10, 1965	Praecipe Withdrawing interrogatories.
2B	July 2, 1965	Notice to take deposition on oral interrogatories (to take deposition of Weldon A. Price).
2C	July 7, 1965	Motion to dismiss, terminate and/or suspend the taking of deposition on oral eaxmination; memorandum in opposition to notice to take deposition (motion of Weldon A. Price).
2D	July 14, 1965	Memorandum of points and authorities in opposition to motion to dismiss, terminate and/or suspend the taking of deposition on oral examination (memorandum by Eunice Janousek). Exhibits with memorandum.
2E	July 23, 1965	Motion for production of documents and records for inspection; notice and points and authorities (motion of Eunice Janousek).
2F	July 29, 1965	Memorandum in opposition to motion for production of documents and records for inspection and/or for a continuance (memorandum by Weldon A. Price).
2G	Aug. 2, 1965	Reply to memorandum opposing motion for production of documents and records (reply by Eunice Janousek).
2H	Aug. 24, 1965	Supplemental points and authorities in opposition to judgment debtor's motion to avoid deposition and production of his financial records (filed by Eunice Janousek).
2I	Aug. 26, 1965	Order (Jones, J., denying motion to dismiss, terminate and/or suspend the taking of deposition and ordering the deposition of Weldon A. Price on September 1, 1965.).
2J	Apr. 7, 1966	Notice of deposition by judgment creditor in aid of execution (for deposition of Weldon A. Price).
2K	Apr. 11, 1966	Motion for protective order; points and authorities; exhibit of contract to stay execution on judgment (by Weldon A. Price asking stay of execution based on contract).

Joint Appendix Reference	Filing Date In Record	Title In Record
3A	Apr. 19, 1966	Points and authorities in opposition to motion for a protective order.
3B	Apr. 19, 1966	Motion to adjudicate judgment debtor in contempt; points and authorities.
3C	May 2, 1966	Motion to require payment of moneys; points and authorities (Galiher-Neyland motion).
3D	May 9, 1966	Points and authorities in opposition to "motion to require payment of moneys."
3E	May 9, 1966	Motion to adjudicate Richard W. Galiher in contempt.
3F	May 18, 1966	Supplemental points and authorities to adjudicate Weldon A. Price in contempt; Exhibit A.
3G	May 19, 1966	Reply to opposition to motion to adjudicate Richard W. Galiher in contempt of court.
3H	May 24, 1966	Order (on motion to adjudicate Weldon A. Price in contempt).
3I	May 25, 1966	Notice of deposition by judgment creditor (for deposition of Weldon A. Price).
3J	May 27, 1966	Motion (of Weldon A. Price for a protective order to stay collection of judgment based on stay contract between parties); points and authorities referring to contract; Exhibit A: the contract.
3K	May 31, 1966	Supplement to opposition to motion for a protective order; Exhibit A.
3L	June 3, 1966	Affidavit (of Robert A. Ellis)
3M	June 7, 1966	Points and authorities in opposition to second motion for a protective order.
3N	June 13, 1966	Order (appealed order on Galiher-Neyland motion).
3O	June 28, 1966	Order (appealed order staying and enjoining collection of judgment).

Joint Appendix Reference	Filing Date In Record	Title In Record
4A	July 11, 1966	Supplemental points and authorities in opposition to motion for a protective order, with Exhibits one through six as follows:
		Exhibit 1: Order on stay motion submitted to Judge Holtzoff on June 9, 1966 by Siciliano and Daly.
		Exhibit 2: Letter from judgment creditor to Judge Holtzoff, dated June 9th, objecting to order submitted.
		Exhibit 3: Counter-order submitted to Judge Holtzoff by judgment creditor on motion to stay and ruling enjoining collection of judgment; served on Siciliano & Daly on June 12th.
		Exhibit 4: Letter of June 15, 1966 from judgment creditor to Judge Holtzoff, correcting statements in letter of Siciliano & Daly, dated June 14th (Ex. 3A following) to Judge Holtzoff.
		Exhibit 3A: Letter of June 14, 1966 from Siciliano and Daly to Judge Holtzoff.
		Exhibit 5: Letter of June 22, 1966 to Judge Holtzoff from judgment creditor objecting to second order submitted by Siciliano and Daly on ruling enjoining collection of judgment.
		Exhibit 6: Second order submitted by Siciliano and Daly on ruling staying and enjoining judgment creditor Eunice Janousek from collecting judgment.
4B	July 12, 1966	Notice of appeal.

SUPPLEMENTARY

BRIEF FOR APPELLANT AND APPENDIX

UNITED STATES COURT OF APPEALS

For the District of Columbia

No. 20,390

EUNICE JANOUSEK

Appellant

v.

WELDON A PRICE
RICHARD W. GALIHER
HERBERT M. NEYLAND

Appellees

Appeal From The United States District Court

For The District Of Columbia

EUNICE JANOUSEK
Appellant, In Proper Person
284 Benjamin Franklin Station
Washington, D. C.

INDEX

CASES

UNITED STATES COURT OF APPEALS

For The District of Columbia Circuit

No. 20,390

EUNICE JANOUSEK

Appellant

v.

WELDON A. PRICE
RICHARD W. GALIHER
HERBERT M. NEYLAND

Appellees

SUPPLEMENTARY BRIEF

This brief supplements the Argument section of the Brief for Appellant filed on September 21, 1966. The additions numbered I through V below supplement the divisions similarly numbered in the Argument section of the first brief.

References to the Joint Appendix of the first brief are given as "J. A." followed by the page number, while those referring to the supplementary appendix of this brief are designated "S. A." with the page number. When they do not appear in the supplementary appendix, pages of the transcript of the motions hearings, transmitted as a supplemental record, are referred to as "Tr." with the transcript page number.

I

Pages 4-11 and 13-15, inclusive, of the first brief summarize essential parts of the record, showing that the appellant, assignee of an attorney's lien

and substituted as such by the District Court's order of January 22, 1965, became vested with a twenty percent interest and judgment lien in the malpractice judgment against Weldon A. Price by the Court's subsequent order of April 5, 1965 on the petition to enforce an attorney's lien. (S. A. 6, 7)

The procedural steps taken to that order carefully followed and conformed to this Court's directives in Falcone v. Hall, 98 U.S. App. D.C. 363, 235 F2d 860. The appellant's predecessor in interest filed his petition to enforce the attorney's lien, showing a contingent fee contract with the client, the attorney's services performed under that contract over a period of several years in obtaining the malpractice judgments and their affirmance by this Court, the attorney's discharge by the client in breach of the contract not long after the judgment debtor's petition for rehearing had been denied by this Court and very shortly following execution the attorney had begun on the malpractice judgments which had brought about a payment being made on them. (S. A. 1-6; J. A. 1, item 1E) The former client was served with the petition, attended and took part in the hearing and evidence taken on it, upon all of which the order of April 5, 1965, establishing the appellant's lien interest at twenty percent was entered. (S. A. 7)

There is one important factual difference between Falcone and the present and the present case. In the former the attorney-client relationship still existed. In the present case the attorney who filed the petition to enforce his lien was dismissed by the client in mid-1963 (the client at the same time having approached the judgment debtor's insurer in an effort to secure delivery of the funds being paid on the malpractice judgments to himself, to the exclusion of the attorney), which terminated the attorney-client relationship. It no longer existed when full ownership of the lien was acquired by the appellant. (S. A. 3, 5, 6, 7)

Although the appellees have with odd obstinacy declined to accede to, or even

recognize, the law controlling (and in oral argument, making no disclosure of it or the governing record, having in June 1966 persuaded a District Judge to enter orders contrary to both, which are now on appeal), the decisions of this Court have made it unmistakably clear. Repeatedly they have declared that an attorney possessed of a lien growing out of a contingent fee contract is a party to the litigation, in so far as his contractual interests and rights are concerned, and when necessary to protect or enforce his interest and lien he may act fully and independently as a party in his own right in that litigation. For under the contingent fee contract, as the decisions point out, the attorney depends on the funds or judgment to be obtained for his compensation; the contract vests in him a power coupled with an interest in the litigation; and at the time it is made the contract constitutes an equitable assignment by the client pro tanto of a share in the judgment and proceeds

The right of the lienor to proceed independently in his own interest has indeed been upheld by this Court on merely the existing contingent fee contract, long before judgment and upon the mere possibility of a judgment being obtained from which the lienor's compensation might come. And in Kellogg v. Winchell (1921), 51 App. D.C. 17, 273 Fed. 745, where the Court so reaffirms the right of the lienor to proceed (citing, among other earlier cases, Sullivan v. Tobin (1914), 42 App. D.C. 430) independently, in his own right and interest, the Court further authorized the lienor to prosecute an appeal of the client's action without applying for intervention or securing any formal confirmation of his independent status as a party litigant, other than the existing contingent fee contract:

> "Fletcher by his return to the rule shows that he has performed much service under contract for which he is entitled to compensation. It was undoubtedly the intention of the parties that he should be permitted to prosecute the case to a final determination. Only by this means could he earn the fees contemplated by the contract. While there were no words of grant in the contract, it is a 'principle even of the common

> law that words of covenant may be construed as a grant when they concern a present right.' (citing Barnes v. Alexander and other cases) * * * Fletcher was given a present right ' to try and earn a fee contingent upon success.' Barnes v. Alexander, supra. Hence he was vested with an interest in the cause of action (citing cases). Having his interest, he may, in accordance with the principle announced in Sullivan v. Tobin, 42 App. D.C. 430, intervene in the suit to protect it.
>
> "This is a proceeding in equity where forms may be disregarded. He may, therefore, if he desires, prosecute the appeal the same as if he had formally intervened for the purpose of having his interest in the litigation determined. Whatever he does, however, must be done on his own account, for he has no longer any right to represent Kellogg. The right was terminated by the latter's letter revoking his authority. "

Again in Continental Casualty Co. v. Kelly (1939), 70 App. D.C. 320, 106 F2d 841, the Court points out the lienors' vested interest in the litigation, created by the contingent fee contract, entitling them to proceed independently to protect and enforce their individual interest in the litigation:

> "The question is not new, and we think our decision in Kellogg v. Winchell, 51 App. D.C. 17, 20, 273 F. 745, 16 ALR 1159, determined the principle which should control. We held in that case that a contract such as the one we have here gave the attorney an interest in the cause of action. This interest is in the nature of an equitable lien * * * It is clear from the agreement that from the time of its making there was a distinct appropriation of the fund by the client and an agreement that the attorneys should be paid out of it. "

And more recently this was again called to attention in Falcone v. Hall, (1956), supra; the contingent fee contract upon which the attorney relies for his compensation gives him, as this Court points out, "an interest in the cause of action (citing cases) * * * This interest is treated for purposes of recognition as an equitable contract lien, and an attorney entitled to such a lien is protected in a number of ways (footnote citations)."

But for the fact, mentioned previously, that the lienor in Falcone appeared still to be representing the client and was under the concomitant duties of that

existing relationship, the case governs and applies with special emphasis to the appellant's position, her now fully vested judgment lien conferred by an adjudication and order on the petition to enforce the lien, and her individual and independent right to collect the amount owed her. For in Falcone, though the lienors had not at that stage yet had the amount of their lien fixed by a District Court proceeding and determination, the client they represented under a contingent fee arrangement had refused to collect the judgment in which their compensation lay. And this Court, prescribing the method of fixing the amount of their lien, points to their vested interest and right to proceed independently to collect the judgment to secure payment of their judgment lien: (98 U.S. App. D.C. at page 365):

> "We think that in a proper case an attorney may apply to the court in his own name, assert his interest and lien, and secure enforcement to the extent necessary to satisfy a valid claim for compensation, of a judgment favorable to his client. If the attorney has an interest in the cause of action, he has an interest in the judgment into which the cause of action merges. If he has agreed to look only to the ultimate recovery for his compensation and has obtained a judgment establishing his client's right to recover, the client's subsequent failure or refusal to take the steps to enforce collection of the judgment debt should not deprive the attorney of his fee; in these circumstances he should have the right to proceed in his own name to realize on the judgment on which he has an equitable lien. "

The appellant respectfully submits that it was -- to use a word moderate in the circumstances -- preposterous for the appellees ever to have come before the District Court in the face of these decisions by this Court and the settled state of the law generally, and to suggest that the appellant had no interest in the judgment or any right to proceed with its collection and that the sole ownership and control reposed in a faithless client whose breaches of contract and collusion to defraud the attorney who had long served him and brought his claims to fruition had compelled the filing of the petition to enforce the lien which the appellant owns.

Yet that was precisely what the appellees attempted not long after the order

of April 5, 1965 on the petition, which established appellant's judgment lien at twenty percent. [1/] When the appellant sought to execute to satisfy it she was met by the judgment debtor's motions denying that Miss Janousek had any interest or status. (J.A. 1, items 1J, 1K; J.A. 2, items 2C and 2F) These were answered, showing the fallacy -- the utter disregard of the judgment debtor and his attorneys for the existing judgment lien and the appellate decisions controlling -- of these contentions; the opposition filed to the motions included comprehensive legal memorandums. (J.A. 1, item 1K; J.A. 2, items 2D, 2G and 2H) As shown by the certificates of service, the above motions, the opposition and memorandums were all served on Richard W. Galiher and Neyland. (S.A. 8-9; J.A. 2: 2B-2I)

When the motions came on for hearing before Judge William Jones, he stated he had examined them, the opposition filed and had gone over the file in detail; he called upon the judgment debtor's attorneys to state the basis of their objections to appellant's execution. They thereupon argued at considerable length contending, just as their motions contended, that Miss Janousek had no lien, judgment or any status whatever that gave her a right to proceed independently in her own interest on the unpaid judgment; that "her interest, if any" was subordinate to Neyland's whose control over the judgment was absolute; that Neyland "whose judgment it is" did not wish to collect it, did not want execution to go forward, and Miss Janousek was therefore without any interest, control or right to take the deposition or examine the judgment debtor's records for purposes of execution. As the judgment debtor's attorney made each contention, each was rejected by the Court, often with references to the order of April 5, 1965 vesting Miss Janousek with the twenty percent lien, and the law governing. At the end of the argument the

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1/ Which is 20% of $50,000 continuing unpaid on the malpractice judgment against Weldon A. Price, or $10,000 plus interest from July 29, 1963.

motions, in which all of these contentions were given as grounds, were denied by the Court and the order of August 26, 1965, ordering their denial, was entered. The order also required the judgment debtor to present himself for Miss Janousek's deposition in aid of execution on September 1, 1965. (S.A. 9)

The order was served on Richard W. Galiher and Neyland, as had been the judgment debtor's motion and all of the opposing memorandums; and these two had also received notice of the hearing on them being held on August 26, 1965.

But despite the adjudication and District Court order of August 26th binding on the appellees, several months later the Galiher-Neyland motion (underlying the order of June 13, 1966 now on appeal) re-attempted, repetitiously, the identical contentions. When the Galiher-Neyland motion was argued before Judge Holtzoff on June 2, 1966, the judgment debtor's attorney, of the several representing him, who had appeared before Judge Jones on August 26th, fully acknowledged that the issues then before Judge Holtzoff were those which had been before Judge Jones on August 26th. He did not, however, with the candor that would seem to be required with the Court, go on to state that the issues embodying the judgment debtor's contentions had been decisively, categorically and unqualifiedly decided against the judgment debtor, and that the order of August 26th denying the motions making these contentions was an adjudication of those issues. (Tr. 31, 32) Nor did the attorney inform Judge Holtzoff that on August 26th Judge Jones in denying the motions and entering the order had asked the attorney why Weldon A. Price did not simply pay Miss Janousek the money he owed her under the judgment.

The transcript of the hearing before Judge Holtzoff on June 2nd shows that the contentions repeated in the Galiher-Neyland motion were those already adjudicated on August 26th (Tr. 31, 33-35) as does the motion itself and the answers in opposition with supporting legal memorandums which are in the record. (S.A. 8, 9; (J.A. 1:items 1J, 1K; J.A. 2: items 2B-2I)

Beyond the fact that the order of June 13, 1966 was in error by requiring the appellant to pay over moneys which were her own, which she had properly received in her own right, the order was further in error as under the Court's rulings and orders of June 13 and 28, 1966, the funds received by the appellant were paid in consideration of the contract to stay execution, which the Court enforced by the injunctive order, and did not constitute a payment on the appellant's judgment lien.

II

The judgment debtor obtained the order of June 28, 1966, enjoining the appellant from executing to satisfy her judgment lien, upon his motions and insistence that she was barred by a contract, made with him on September 1, 1965, when he agreed to pay her $7,250 and she in return agreed not to execute for a specific period. 2/ This has been his position throughout in the District Court. It appears repeatedly in the record. For example:

> "Comes now the defendant, Weldon A. Price, by his attorneys, and moves this Honorable Court for a protective order and for reason therefor, refers to the attached Agreement and states as follows: That as a result of a prior notice to take the deposition of Dr. Price, an agreement was entered into by one, Eunice Janousek and Dr. Price, which agreement was reduced to writing and which is attached hereto and made a part of this motion. The agreement was entered into immediately prior to the time of the taking of the deposition of Dr. Price and after the date of the Order signed by Judge William B. Jones." Motion for Protective Order, Filed April 11, 1966.

The appellee Weldon A. Price again pleaded the contract, making it the basis of his second motion to bar the appellant's execution on her judgment lien:

> "Comes now the defendant Weldon A. Price by his attorneys and moves this Honorable Court for a protective order from further notices of depositions by Eunice Janousek and for reasons therefor, states as follows: That as a

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2/ The period of the contract had already expired when he applied for the District Court order which has enjoined execution since April 11, 1966. This is set forth in Sections III and IV of appellant's briefs.

result of a prior notice to take the deposition of Dr. Price, an Agreement was entered into by one, Eunice Janousek and Dr. Price, which Agreement was reduced to writing and which is attached hereto and made a part of this motion, which Agreement stayed further depositions in this case pending disposition of all cases pending in the Virginia Court of Appeals and in the Arlington Circuit Court, the latter of which cases have not yet been adjudicated. There is presently pending in this Court, a similar motion with reference to prior attempts for the taking of defendant's deposition, which motion will be heard on June 2, 1966." Motion, Filed May 27, 1966.

On May 31, 1966, the appellant filed a memorandum in opposition to the motions, pointing out that

"There is no consideration to support the 'agreement' alleged by the judgment debtor -- that is, unless the payment of $7,250 made to Miss Janousek on September 1, 1965 was not made as a payment on Miss Janousek's judgment of $10,000 (with interest at $1,250 additional, accrued to that date), but was instead a payment paid solely in consideration for her agreement not to execute on her judgment until the conclusion of Dr. Price's action against Aetna then pending in the Virginia Supreme Court of Appeals.

"If the payment of $7,250 was paid in consideration of this alleged agreement to withhold execution on the judgment, then there has been no payment made on the judgment of Miss Janousek, and there is presently due her, therefore, the following amounts on her unpaid judgment: Principal amount of Miss Janousek's judgment: $10,000, Interest due on judgment to June 1, 1966: $1,700; Total due on judgment and interest to 6/1/66: $11,700.

"If, on the other hand, Dr. Price intends through his attorneys to contend that the payment of $7,250 was made as a payment on Miss Janousek's judgment and the interest accrued, then there is no consideration whatever to support the 'agreement' he now alleges, because by making the payment on the judgment he was doing merely what he was legally bound to do. (Citing authorities.)" From pages 1 and 2 of Supplement to Opposition to Motion for a Protective Order, Filed May 31, 1966.

Confronted by this knowledge, these facts and their legal significance, the judgment debtor's attorneys during the hearing on the motions on June 2 and 8, 1966, continued to insist even more strenuously that there was a valid contract binding upon and barring the appellant from executing on her judgment lien, and they thereby made the $7,250 consideration for the contract. (S.A. 11-13)

Seeing that the judgment debtor had intended the $7,250 as consideration for

the contract, and not as a payment on the judgment, the appellant thereupon conceded and informed the Court that the contract they urged did exist. (S. A. 13)

Upon that contract which the District Judge declared existed and was binding (S. A. 13, 11, 12) the Court made the order in enforcement of the contract to stay execution and enjoined appellant's execution on her judgment lien. (S. A. 14)

And in subsequent letters of the appellant and of the judgment debtor's attorneys to the District Judge regarding the form of the order to be entered on that finding and ruling, the existence of the stay contract being enforced by the Court in accordance with the judgment debtor's demands is treated as fait accompli:

The appellant's letter of June 12, 1966 to the Court:

"Dear Judge Holtzoff: - I object to the order submitted for the judgment debtor Price.

"The Court did not rule that I should be stayed from ' further attempts to collect or execute for any sums of money allegedly due her arising out of this case, ' but simply granted the motions for a protective order staying my execution on my judgment on the ground of a contract existing between Dr. Price and me, agreeing to stay execution until (as the writing urged by the judgment debtor, which he attaches to his motions, recites) 'Weldon A. Price has completed his litigation against the Aetna Casualty Company in the Supreme Court of Virginia and in the Circuit Court for Arlington County and those pending in Arlington Circuit Court. '

"Not within the ambit of this contractual provision are Law No. 10482 (an action not by Dr. Price but by Neyland), nor Law No. 9637 (an action by Dr. Price but not against Aetna Casualty Company but against William B. Dolan), both of which the judgment debtor attempts, nevertheless, to include in the last sentence of the order submitted to you. The language of the writing they offer on the stay-of-execution contract is restrictive and limits the period of the stay to those actions of Dr. Price against Aetna only.

"I am therefore enclosing an order on the two Price motions which, I submit, carries out the Court's ruling and is drawn in conformity with the record and the written recitals they urge on the stay-of-execution contract.

"In addition to my objections to the form of the orders submitted by Anthony J. Siciliano and Richard W. Galiher on the four motions concerned, I object additionally to both orders, of course, on grounds and for reasons of substantive error in the Court's rulings. Very truly yours, Eunice Janousek." Exhibit 2 of Supplemental Points and Authorities in Opposition to Motions

for a Protective Order, Filed July 11, 1966.

Letter of one of the attorneys for the judgment debtor Price to the Court:

"Dear Judge Holtzoff: - We have a copy of Miss Janousek's letter of June 12, 1966 and must object to the contents thereof and her proposed order. At the time the agreement was made, it was known to Miss Janousek that all of the cases mentioned in our order were pending and dealt with the identical problem of the excess judgment rendered against Dr. Price. This is particularly true with the case of Dr. Price vs. Dolan, Law No. 9637, in which Aetna Casualty and Surety Company is defending Dr. Dolan. The suit against Dr. Dolan pertains to his part of the diagnosis given to Dr. Price upon which he relied and which later turned out to be in error. Siciliano & Daly, by Robert Ellis." Exhibit 3A of Supplemental Points and Authorities in Opposition to Motions for a Protective Order, Filed July 11, 1966.

No valid stay contract from Miss Janousek to the judgment debtor, promising not to execute for a specific period, could have come into being, or existed, without independent consideration to support it. The appellant respectfully submits that this is a most elementary principle of law, repeatedly announced and applied by the courts in a vast number of cases. A payment on the judgment by the judgment debtor Price was no consideration for the contract; the consideration that supports the contract urged by the judgment debtor, found by the Court and enforced by the Court's injunctive order of June 28, 1966, was the payment of $7,250. (S.A. 11-13; Tr. 6-10, 14, 38-40, 18, 38-48)

This Court has many times announced the basic principle that controls in this instance. The following cases are examples: Littlepage v. Neale Publishing Co. (1910), 34 App. D.C. 257, showing that where a party does that which in law he is already bound to do, a promise obtained from the opposite party therefor is nudum pactum and unenforceable. Also: Murray v. Lichtman (1964), 119 U.S. App. D.C. 250, 339 F2d 749.

The rule has been applied specifically to contracts to stay execution on judgments, holding that a payment on the judgment is not consideration and does

not support a promise not to execute on a judgment; it is a promise requiring independent consideration for its validity. Union Bank v. Govan (1848), 18 Miss. 333; Runnamaker v. Corday (1870), 54 Ill. 303; Phoenix Insurance Co. v. Rink, (1884), 110 Ill. 538.

The rule has, of course, been regularly applied in the Federal Courts. Among the cases: Skinner v. Garnett Gold Mining Co. (1889), 96 Fed. 735, at 747; Gleason v. McDonald (CA 6th 1939), 103 F2d 837; Southern Equip. Sales, Inc. v. Associates Discount Corp. (D.C. Mo. 1962), 223 F. Supp. 837.

Moreover, the judgment debtor is foreclosed by equitable estoppel from now taking an inconsistent position, or attempting to gainsay or reverse his position on the contract he enforced by Court order, whose benefits he has enjoyed and continues to enjoy to the detriment and disadvantage of the appellant.

The appellant respectfully submits that the rule of estoppel, so frequently enforced on contracts in situations paralleling the present one, is equally a very basic one; and the judgment debtor Price is estopped, should he attempt to do so, from denying the contract he asserted and enforced, whose benefits he enjoys, and in consideration for which he paid the appellant $7,250. Massachusetts Bonding and Insurance Co. v. Vance (1918), 74 Okla. 261, 180 P. 693, 15 ALR 981; Coin v. Bonner (1917) 108 Tex. 399, 194 S.W. 1098; Thwing v. McDonald, 134 Minn. 148, 156 N.W. 780.

III and IV

The transcript of the hearings before Judge Holtzoff shows that the Court was informed that the contract to stay execution was being extended beyond the period specified by the parties. (Tr. 15-16, 42-47) That period was limited to the termination of the appeal then pending in the Virginia Supreme Court of Appeals in

Aetna Casualty & Surety Co. v. Price, or to any retrial that might have become necessary because of the appellate decision. The interlineation in the stay contract pleaded by the judgment debtor applied to the latter; that is, appellant agreed to defer execution until after any retrial of the action in the Circuit Court of Arlington County. (S. A. 9, 10; Tr. 42-48)

A short time after the contract to stay execution was made, its terms were again set out in a consent order to stay execution on this judgment in the United States District Court for the Eastern District of Virginia. The judgment debtor's attorneys signed the consent order. It extends the period of the stay only to the conclusion of the appeal then in the Virginia Supreme Court of Appeals, or to possible proceedings on that case in Arlington County. And this was the express agreement when the stay contract was made. (S. A. 10)

The decision of the Virginia Supreme Court of Appeals in Aetna v. Price, 146 S. E. 2d 220 on January 17, 1966, and the denial of a petition for rehearing on March 7, 1966, concluded that case. The judgment was for Aetna, it was final, and it disposed by its terms of several other cases brought by Weldon A. Price then pending in the Arlington courts. These facts were brought out in the motions hearing leading to the injunctive order. The Court, however, extended the term of the stay beyond the agreement of the parties to include the several cases then awaiting dismissal in Arlington under the decision of the Virginia Supreme Court of Appeals. (Tr. 15, 10-12, 41-48) The Court relied on the judgment debtor's attorney, asked him to supply an affidavit giving the cases which governed the term of the stay contract. (Tr. 9-12) The attorney, in his affidavit subsequently filed, gave the Court the name of a case not even in existence when the stay contract was made on September 1, 1965. (Tr. 44-48) And in this affidavit cases were also

listed in which Weldon A. Price was not even a plaintiff. (J.A. 4, item 4A, Exhibits 1-6) Taking the term of the stay contract in the most liberal interpretation to favor the judgment debtor -- and disregarding the term of the stay set out in the consent order in the Virginia Federal Court, signed by the judgment debtor's attorneys -- it could not have extended beyond the termination of Aetna v. Price, supra, in the Virginia appellate court, which disposed of Weldon A. Price's various suits in Arlington in early 1966.

It is respectfully submitted that the injunctive order of June 28, 1966 has erroneously extended the stay of execution beyond the contract to stay execution which the parties made.

V

When the motions culminating in the two orders on appeal came on for hearing, the Court had not read or examined the file. The Court was confused by the judgment debtor's attorney's argument and incomplete presentation. (Tr. 4-8, 31, 32) The Court was equally confused by the presentation of the attorney speaking for himself and Neyland, who made no disclosure of the previous orders controlling and evaded any reference to governing decisions, or the fact that the contentions he was then repetitiously making had been disposed of and adjudicated earlier. (18-23, 29-32)

In the midst of this confusion and non-disclosure by the attorneys, the Court denied the appellant the right to present and discuss the cases. (SA 12, Tr. 27, 28, 34, 35) The appellant, as the record and her previous court appearances in this matter show, though not an attorney is perfectly capable of getting directly to the heart of the argument and the controlling features and law in the case -- as, indeed, the transcript of the hearing shows she did on June 2 and 8, 1966. And

that transcript does not show all that occurred.

In this atmosphere, without the governing factors before him, and upon the representations of the attorneys and his complete reliance on their incorrect assertions, with non-disclosure of the controlling law and occurrences of record, the Court granted the Galiher Neyland motion by a ruling from the bench on June 2, 1966. (Tr. 35; SA 13)

The transcript of the hearings does not include other occurrences. It does, however, sufficiently disclose, the appellant respectfully states, the District Judge's predilictions for attorneys and against appearances in proper person. (Tr. 13-18, 23, 27, 28, 29, 34, 35, 44-48)

And it does disclose that the appellant was not heard, was cut off, and at one point was, without any cause whatever, threatened with ejection from the court-room. (SA 12, Tr. 27, 28, 35, 44-48) The appellant was not given opportunity to discuss the applicable law or otherwise present her position and case in accordance with her right to do so in proper person as secured constitutionally, and expressly by 28 U.S.C. §1654.

Respectfully submitted,

EUNICE JANOUSEK
Appellant, In Proper Person
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SUPPLEMENTARY APPENDIX

Petition To Enforce Attorney's Lien On Judgments And For Related Relief **

Filed August 23, 1963

Joseph O. Janousek, the attorney-lienor herein, respectfully petitions and states to the Court as follows: I - On October 23, 1956, this attorney contracted on a contingent fee basis with Herbert M. Neyland, acting for himself and for his infant daughter, Michele Marie Neyland, to prosecute the within medical malpractice case against the four defendants named in the complaint herein, two being obstetricians practicing in partnership and two being pediatricians practicing in partnership, all in practice primarily in Virginia where their offices are located. II - The contract between this attorney and the said Herbert M. Neyland, made on October 23, 1956, followed more than eight months of thorough investigation, medical research and study and medical consultation with experts in the fields of blood pathology, obstetrics and pediatrics. The investigation included data obtained from the hospital records in this case prior to the notice of any claim or the filing of suit, and a blood examination, made at the direction of this attorney to Herbert M. Neyland, of the blood of the parents and of the afflicted infant, by the laboratories of Dr. Oscar B. Hunter. The report of that blood examination,

** Note: The Petition, consisting of fifteen pages, summarizes the attorney's investigation of the case, the contingent fee contract, the professional services he rendered on a complicated medical malpractice case over more than seven years, the client's breach of the contract in mid-1963 after the malpractice judgments had been affirmed, when execution on the judgments had begun and as a payment on the judgments was being made. It prays for the enforcement of an attorney's lien and to fix the petitioner's independent judgment lien in the malpractice judgments. The petition is detailed and is before the Court in the District Court records, showing, among other things the client's discharge of the attorney and efforts to defraud him of his compensation. To avoid unnecessary printing, appellant includes only brief excerpts from the petition (in compliance with Rule 16(i)) and does not attempt to include the attorney's summary of his extensive services in a very specialized medico-legal field well over seven years to the affirmance by this Court of the action and the theory upon which he brought it--now ten years ago when some aspects of the underlying medical science were new and had not previously come before the courts for evaluation of legal liability.

on April 10, 1956, began to indicate the existence of liability on the part of the prospective defendants when viewed in the cast of the data obtained from the hospital records and other factors . . . Early in February 1956 this attorney had agreed conditionally to look into the matter at the persuasion of Neyland and others . . . The petitioner states that the basis of liability in this case, its existence or non-existence, came within an extraordinarily complex and technical phase of medical science dealing with blood, its elements, the interpretation of blood group reactions, very involved laboratory and other procedures, in addition to the factors and standards of practice in the branches of obstetrics and pediatics into whose already specialized areas of medicine this blood science (termed immunohematology) extended in the setting of the birth of the child under the supervision of the defendant obstetricians and her postnatal care by the defendant pediatricians . . . As the months progressed . . . it began to appear that a theory of liability might be developed against the prospective defendants . . . A few days after this attorney's first conference with Herbert M. Neyland on February 4, 1956, this attorney advised him that aside from the massive technical and scientific ramifications surrounding the question of liability, there were procedural complications as well. He was informed that among the latter the statute of limitations had run against his own claim in the State of Virginia, where the child was born and where the parties live; but that it had not run against his personal claim in the District of Columbia . . . Referring to October 23, 1956, this attorney had Herbert Neyland come to his office. On that day several hours were spent going over with him the results of the preceding eight and a half months of study and investigation of the case; that at that conference on October 23, 1956, among numerous details discussed at great length on the aspect of liability and possibility of its proof within the area of the medical science governing, the terms of the

contingent fee contract were fully discussed, and agreed upon, among them the following provisions on which there has been full and express agreement (terms set forth) . . . On October 25, 1956 this attorney filed the complaint in this action against the four defendants, two of whom (one in the partnership of the obstetrician, one in the partnership of the pediatricians) were ultimately served. . . this attorney will not in this petition undertake anything beyond a very brief . . and general reference to his professional services rendered continuously and extensively from 1956 to July 22, 1963 when the said client wrongfully and in breach of his contract of October 23, 1956, discharged this attorney without cause upon having learned that the insurer was about to make a substantial payment on the judgments; this attorney's discharge by the client, in breach of contract, occurring at a time wh the petitioner's professional services, save for the collection of the now affirmed judgments, have been fully performed. . . That the services he has performed have been extensive and thorough from their inception and throughout the course of the contract until its breach by the client on July 22, 1963. This malpractice case has been in the highly technical and specialized field of immunohematology, extending into obstetrics and pediatrics in medicine. The case has required constant and continuing study and effort in its development. Because of the defenses made it has been necessary to know, show and establish the state of the science as it existed prior to the child's birth in 1953, as it existed at the time of the child's birth, and as it presently exists. The size and scope of medical literature on the subject is gargantuan, in some respects confused and occluded by divergent opinions on the part of doctors who have undertaken to write on the subject and express opinions without sufficient case history study and background to support their minority views which were, nevertheless, employed in some respects in the defense of this case both in this Court and in the Court of Appeals. . . The theory of med-

ical liability which this petitioner formulated, upon which he filed the action and upon which the recovery has been made -- set out in part in the plaintiff's pretrial statement wholly prepared by the petitioner, some of which is incorporated in the pretrial conference order, and which appears in some what more detail in the appellees' brief in the appeal -- was strenuously opposed by the defendants. The judgments obtained have been affirmed on appeal, constituting a case of first impression on the theory of medical liability which this petitioner developed and advanced, upon which he predicated the claims, upon which they went to trial, and upon which they were affirmed . . . As is indicated in the appellate opinion, and as appears in the briefs, underlying the questions of liability are a maze of technical factors and principles upon which liability turns. The development of this case and its theory of liability over the several years it has been in litigation has required constant work and consultation by this petitioner in the science involved The answers to interrogatories directed by this petitioner to the defendants in 1960 provided the turning point on the question of liability, and made possible the proof of that liability. The interrogatories were prepared, with the aid of a medical consultant, after considerable and thoughtful study of the case in the setting of critical medical factors affecting liability . . . This attorney has undertaken specialized study in this very interesting but exceedingly technical phase of medical science, its laboratory and other procedures related to it. To develop this case and to be able to prosecute it effectively both from the standpoint of substantive law and methods of proof, this attorney has regularly, almost constantly in the course of this case, conferred and consulted with leading medical specialists in the field, including Dr. Alexander H. Wiener, the surviving co-discovere of the Rhesus factor in human blood from which this complex science took root in about 1937, expanding within a few years into perhaps one of the most important sciences in

obstetrics, pediatrics, and other branches of medicine where blood factors, reaction agents, their effects and consequences play a role. This petitioner's work and study in the field for purposes of prosecuting this case most effectively in the clients' interest has extended to consultation with such specialists in various parts of the United States; and the study and research undertaken to advance this case have been made both in the United States and Europe, in the latter countries without additional cost to the clients.*/ . . The major part of the appellees' brief in the Court of Appeals is entirely of this petitioner's preparation, this petitioner's work, this petitioner's writing. Every part of the appellees' brief pertaining to the medical science and factors and theory of medical liability (which the appellant strenuously challenged and disclaimed) is exclusively and in every word this petitioner's work and writing. . . Following affirmance on May 2, 1963, the appellant again challenged the theory of liability, elements of the medical science the appellees had shown negligence under; the appellant questioned the Court's interpretation of the scientific factors, disagreed with the Court's opinion and the language used by the Court in relating the medical elements and factors underlying liability. The appellant by petition for rehearing requested a hearing by the Court en banc, urging numerous reasons. The answer to the petition for rehearing and for reconsideration by the Court en banc, was prepared entirely by this petitioner. On July 2, 1963 the Court of Appeals, upon consideration of the petition and answer, en banc denied the petition. . . Following this attorney's receipt on July 22, 1963 of his client's letter discharging this attorney, the said Herbert M. Neyland in further breach of his contract of October 23, 1956, has failed and refused to pay, as

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*/ The petitioner, Mr. Janousek, is the author of the standard text on the subject: Malpractice - Blood Incompatibility in the Newborn, 15 American Jurisprudence Proof of Facts 169.

required by the express terms of the contract he made, the attorney's fee of fifty percent of the recovery, and he continues to refuse the payment under the contract . . . This attorney therefore petitions hereby to enforce his equitable charging lien against the judgment and against all amounts to be paid on account of the judgment and interest on the judgment . . . (followed by similar prayers) Joseph O. Janousek */ (Certificate of Service showing service on Neyland).

* * * *

Motion For Substitution Of Assignee — Filed January 6, 1965

Eunice Janousek moves the Court for an order substituting her for Joseph O. Janousek, the attorney-lienor herein, on the following grounds: The attorney-lienor, Mr. Janousek, by a written assignment dated April 30, 1964, a copy of which is hereto annexed as Exhibit A, assigned and transferred all of his right, title, property and interest in the judgment in this matter to Eunice Janousek, including the right to be substituted in the assignor's place and stead on all pleadings and proceedings herein; and the said Eunice Janousek has since the assignment been, and is now, the lawful owner of the rights, property and interests of the attorney-lienor in the said judgment. Wherefore, Eunice Janousek requests that an order of substitution be entered, substituting her as the party in interest on all pleadings and proceedings herein. Exhibit A:

> "Assignment - Know all men by these presents: That I, Joseph O. Janousek, in consideration of the sum of $10.00 to me in hand paid, receipt whereof is hereby acknowledged, and other good and valuable consideration, do hereby sell, assign, transfer and convey and set over to Eunice Janousek all of my property and ownership in the judgment herein of $100,000 against Weldon A. Price and the partnership of Weldon A. Price and Robert H. Detwiler, together with all of my rights, title and interest therein, with full and unqualified rights of substitution vested hereby in my said assignee, with full and unqualified right on her part to be substituted for me and in my place and stead on all pleadings,

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*/ The appellant acquired all title to the petitioner's lien and rights, as shown by the motion for substitution which follows. Mr. Janousek has had no interest in the matter since 1964.

motions, levys, executions, or otherwise, both heretofore made and filed and in future to be made or filed, my said assignee to stand fully and unqualifiedly as my successor in interest under my said judgment and rights thereunder in this proceeding. In witness whereof I have hereunto subscribed my name and affixed my seal the 30th day of April, 1964. Joseph O. Janousek. (Seal)"

* * * *

Order Substituting Party — Filed January 22, 1965

On consideration of the motion filed herein January 5, 1965, to substitute Eunice Janousek as attorney-lienor herein, and it appearing to the Court that such substitution is just, proper and appropriate, it is by the Court this 22nd day of January, 1965, ORDERED that Eunice Janousek be and hereby is substituted as attorney-lienor herein in the place of Joseph O. Janousek. (S) Burnita Shelton Matthews, Judge.

* * * *

Order (On Petition to Enforce Attorney's Lien) — Filed April 5, 1965

Upon consideration of the Petition to Enforce Attorney's Lien on Judgment, it is by the Court this 5th day of April, 1965, ORDERED, that in the event that further payments are collected on the unsatisfied judgment which the plaintiff Herbert M. Neyland has against the defendant, Weldon A. Price, that 20% of the said collection on said judgment less the sum of $240.88 owed by Joseph A. Janousek to Herbert M. Neyland, is to be paid to Eunice Janousek, and 20% of the collection on said judgment is to be paid to Richard W. Galiher, these amounts totalling 40% and representing the attorney fees to be charged by the said Joseph O. Janousek and Richard W. Galiher in their representation of the plaintiffs' in this action.

(S) George Hart, Judge.

* * * *

Motion to Quash Interrogatories — Filed April 14, 1965

"Comes now the defendant, Weldon A. Price, and moves this Honorable Court to quash and/or suspend the giving of interrogatories filed herein and for reasons therefor refers to the memorandum in opposition to interrogatories filed herein and for other reasons as will be advanced at the oral hearing of this motion. . . Memorandum in opposition to interrogatories: The interrogatories propounded by the attorney lienor do not include the principal plaintiffs in interest, nor do they include the remaining attorney lienor, Richard W. Galiher. (S) Siciliano & Daly."

* * * *

Motion to Dismiss, Terminate, Etc. the Taking of Deposition on Oral Examination — Filed July 7, 1965

"Comes now the defendant, Weldon A. Price, by and through his attorneys, and moves this Honorable Court to dismiss, terminate and/or suspend the taking of deposition on oral examination in the above-entitled matter and for reason therefor states: . . . This defendant states that it appears from the notice to take the deposition that the judgment creditor is not a party to the suit nor does it appear that she is an attorney of record in the suit and upon information and belief states to this honorable court that Eunice Janousek is not an attorney in any jurisdiction; that at best her assignment is from an attorney, Joseph Janousek, whose interest, if any, is secondary to the interest of the plaintiff Herbert M. Neyland . . . By order of the court the interest of one Janousek is 20% but that the amount could be in a sum less than the sum due and thus there is no sum certain known to this defendant . . . Memorandum in opposition to notice to take deposition: . . . it is respectfully submitted that as a non-attorney she would not be entitled to such sum or at the very minimum her claim should be made the subject of proof. (S) Anthony J. Siciliano, Siciliano & Daly."

* * * *

Memorandum in Opposition to Motion for Production of Documents — Filed July 29, 1965

"Comes now the defendant Weldon A. Price, by his attorneys, and in opposition to the motion for production of documents and records for inspection states as follows: The defendant refers to the motion to dismiss, terminate, etc. the taking of deposition on oral examination . . wherein this defendant stated and states again in present opposition that the judgment cfeditor is not a party to the suit nor does it appear that she is an attorney of record in the suit, and upon information and belief states to this honorable court that Eunice Janousek is not an attorney, and her brother, Joseph Janousek, whose interest, if any, is secondary to the interest of the plaintiff, Herbert M. Neyland . . . The interest of Joseph Janousek is at best 20% of any sums collected and since the entire judgment may or may not be collected in toto there is no certain sum due . . . An attorney's fee is not due until there is an actual sum collected and since it has not, in fact, been collected, there is nothing due . . . The alleged judgment creditor is a non attorney and must have her claim made the subject of proof. . . The primary plaintiff, Herbert M. Neyland, has expressed a willingness to await the adjudication of the claims in the Virginia courts and has expressly stated an unwillingness to pursue after judgment

proceedings in the form of interrogatories, garnishments and depositions. And for other reasons as will be advanced at the hearing of this memorandum. (S) Anthony J. Siciliano, Siciliano & Daly." Certificate of service on R. W. Galiher.

* * * *

Order (of Judge William B. Jones) Filed August 26, 1965

Upon consideration of the motion "to dismiss, terminate and/or suspend the taking of deposition on oral examination" of the defendant and judgment debtor Weldon A. Price herein, it is by the Court this 26th day of August 1965, ORDERED that the said motion be, and the same is hereby, denied; and further ORDERED that the deposition of the saidWeldon A. Price shall be taken by the judgment creditor Eunice Janousek on Wednesday, September 1, 1965, at the time and place designated in her Notice to Take Deposition on Oral Examination filed herein on July 2, 1965. (S) William B. Jones, Judge.

* * * *

Motion for Protective Order Filed April 11, 1966

Motion (for protective order) Filed May 27, 1966

(Note: these two motions appear in full context at pages 8 and 9 of the Supplementary Brief for Appellant. To both is attached the agreement to stay execution, pleaded by Weldon A. Price who asked its enforcement and that appellant be stayed from executing on the judgment in accordance with its terms. The contract he attached to the motions follows, as does its counterpart, reciting the terms of the contract, filed as a consent order in the Federal Court in Alexandria.)

"Stay agreement and receipt - In consideration of the sum of $7250, delivered and paid to me by check on September 1, 1965, I, Eunice Janousek, judgment creditor in Civil Action No. 4231-56 in the U. S. District Court for the District of Columbia (Eunice Janousek and Neyland vs. Weldon A. Price), a judgment which has also been registered in the U. S. District Court for the Eastern District of Virginia in No. 3164, agree that this payment of $7, 250 shall be credited as a payment on my said judgment, and the interest accrued thereon, and I further agree to stay execution and collection proceedings on my said judgment against Dr. Price, in the following respects: 1. My judgment against Dr. Weldon A. Price is in the amount of $10, 000, with interest at 6% which has accrued from July 1963 through August 1965 in the amount of $1, 250. The sum of $7, 250 paid to me at this time shall be credited as follows: $6, 000 is credited to the judgment of $10, 000, and $1, 250 is credited to the payment of interest accrued on my said

judgment through August 1965. Following these credits, which I hereby receipt and acknowledge, there continues unpaid on my judgment the sum of $4,000, with interest at 6% from September 1, 1965, until the date the $4,000 balance is paid.
2. I agree to stay collection and execution proceedings on the said balance of $4,000 remaining due on my judgment and on the interest which accrues, in both the U.S. District Court for the District of Columbia and in the U.S. District Court for the Eastern District of Virginia until Dr. Weldon A. Price has completed his litigation against the Aetna Casualty Company, his insurer, which is now pending in the Supreme Court of Virginia and in the Circuit Court for Arlington County Virginia
3. It is understood that my stay of these proceedings shall in no way affect the ultimate payment of the balance of $4,000 due on my judgment, and that the payment of the balance of $4,000 and interest due me shall not in any way be contingent or dependent upon the outcome of the litigation between Dr. Price and his insurer.
4. It is also understood that during the period of the stay of proceedings I have agreed to, all proceedings on the judgment in both the United States District Court for the District of Columbia and in the U.S. District Court of Virginia shall be held in status quo, shall continue unchanged and there shall be no proceeding or action taken in either court by either Eunice Janousek or Weldon A. Price, until Weldon A. Price has completed his litigation against the Aetna Casualty Company in the Supreme Court of Virginia and in the Circuit Court for Arlington County.-- (and those pending in Arlington Circuit Court.) -- E.J. A.J.S. Eunice Janousek Signed September 1, 1965." (parenthetical clause in pen, written by A. J. Siciliano)

* * * *

Order Staying Proceedings

Filed September 21, 1965
(in U.S. District Court for East. Dist. of Virginia)

"This matter having come on for further consideration by the Court, and the Court having been informed by the judgment creditor, who appears in proper person, and by counsel for the judgment debtor that the said parties have entered into an agreement wherein the proceeding on the judgment in this Court is to be held in status quo until the judgment debtor, Weldon A. Price, has completed his litigation against his insurer, the Aetna Casualty Company, which is now on appeal before the Supreme Court of Virginia, and the said parties having indicated their consent to the entry of this order, it is by the Court this 21st day of September, 1965, ORDERED, that the matter and proceeding in this Court be, and it is hereby, to be held in status quo, and that all proceedings on the judgment in this Court shall be stayed until the judgment debtor, Weldon A. Price, has completed his litigation against his insurer, the Aetna Casualty Company, now on appeal before the Supreme Court of the State of Virginia; this order to be without prejudice to the right of either party herein to proceed further on the matter in this Court when the said litigation of the judgment debtor has been completed. (S) Oren R. Lewis, U.S. District Judge. Consent of parties to order staying proceedings: We approve and consent to the entry of the foregoing order: (S) Eunice Janousek, (S) Robert L. Ellis, Siciliano & Daly, for Weldon A. Price, Peter J. Kostik for First National Bank of Arlington, Garnishee, Thomas W. Dodge, for the Garnishee Clarendon Trust Company." (Note: The above order is an exhibit filed with appellant's "Supplement to Opposition to Motion for a Protective Order." Filed May 31, 1966 in the United States District Court in the motions proceeding leading to this appeal.)

From Transcript of Motions Proceedings
on June 2 and 8, 1966.

Robert L. Ellis for the defendant; Richard W. Galiher for himself and the plaintiff; Eunice Janousek, Pro Se:

Mr. Ellis: Your Honor, My name is Robert Ellis from the law office of Siciliano and Daly. As a very brief background, Your Honor, Dr. Price -- (Tr. 4)

The Court: First tell me what your motion is. (Tr. 5)

Mr. Ellis: I am sorry, Your Honor. My motion is a motion for protective order from further discovery proceedings . . . She then proceeded to take discovery, or filed a notice to take discovery depositions in order to collect a fee which she alleged was due her . . . But pending and just prior to the taking of the deposition -- which by the way was set by Judge Jones, he set a date and a time for the taking of Dr. Price's deposition. We appeared at the deposition. At the time that we appeared at the deposition we entered into an agreement with Eunice Janousek, which agreement is made a part of my motion in this file therewith. The crux of the agreement, Your Honor, was and is that in consideration of the payment of $7,200 to Miss Janousek she was to forestall and forego further discovery proceedings and any other attempts at collecting the monies which she alleged were due. (Tr. 5, 6)

Mr. Ellis: . . . so we entered into a quote stay agreement and receipt with Miss Janousek . . . We are asking that the Court prohibit any further attempts at collection of any fees or judgment which Miss Janousek alleges she is due from Dr. Price. (Tr. 7)

The Court: In other words, in behalf of the defendant Price you are asking an order that the plaintiff be precluded from taking your client's deposition, is that it?

Mr. Ellis: That and any other collection or execution proceeding to collect.

The Court: I don't know what that means.

Mr. Ellis: Well, that would mean, Your Honor, first of all, Eunice Janousek is not the plaintiff, she is a separate, alleged separate judgment creditor in this suit. This would include any attempts, for instance deposition, discovery depositions to find out where assets are, any attachment proceedings, any garnishment proceedings.

The Court: What is the basis of your --

Mr. Ellis: The basis, Your Honor, is an agreement signed by Miss Janousek, dated September 1, 1965, between the parties at the time that we paid her $7,250 . . . (Tr. 8)

The Court: Is the agreement annexed to your motion?

Mr. Ellis: The agreement should be attached to the motion, Your Honor.

The Court: Yes, I see. (Tr. 9)

Miss Janousek: . . . Then may I ask Your Honor one thing. If we are going to put the one motion over, may I, until Dr. Price's counsel has defined whether he considers that an agreement --

The Court: Just a moment. It is considered an agreement. Now you may sit down.

Miss Janousek: Well, may I have --

The Court: You may sit down. (Tr. 18)

Miss Janousek: Your Honor, I have an independent judgment for $10,000. It's acknowledged by Dr. Price for the payment of that on the judgment, and if he didn't pay it on the judgment, then he did pay it on the agreement to stay my powers of execution. If he paid it on an agreement, I don't owe Mr. Galiher anything, because it is my money. If, on the other hand, Your Honor, I have a right to collect, I have a right to collect Mr. Janousek's -- he had an independent right to collect, Your Honor. If you will allow me to read from Falcone v. Hall - -

The Court: No.

Miss Janousek: That is the basis for Judge Hart's order, Your Honor.

The Court: I am not going to have a layman read law to me. (Tr. 27, 28)

Miss Janousek: I was taking that deposition under the Judge's order, Your Honor.

The Court: All that is is an order allowing you to take depositions. Very well.

Miss Janousek: No, Your Honor, it is more than that. That order was filed as a result of his contentions which are in my memorandum on file before Your Honor, here filed on May 9th in my points and authorities and notice of deposition. Clearly all of it is set out. Copies of Judge Jones' order are in there, my assignment is in there, Judge Hart's order is in there, the petition for the attorney's lien is referred to, and it does show, Your Honor, that before Judge Jones these same matters came on, were ruled on, were rejected by him, and I was given the right to proceed, Your Honor. I might add, Your Honor, that at the time that money was paid, some seven months ago, Mr. Galiher made no claim at that time. The case of Dr. Price was pending in the Supreme Court of Virginia. I had an agreeme then they paid me $7,000 on the agreement. If they paid it on the judgment, then I have a right to collect, then I have a right to pursue that judgment. I have an independent right to take depositions. (Tr. 33, 34)

From Proceedings on June 8, 1966:

The Court: I don't recall what the status of the matter was last week. I have so many matters. (Tr. 38)

Mr. Ellis: This was a matter that we filed initially, a motion for protective order for any further discovery proceedings or any collection attempts based on the contract entered into between Dr. Price and Miss Janousek.

The Court: What was my ruling on that?

Mr. Ellis: Your ruling was to submit an affidavit showing that there were cases pending in Arlington Circuit Court, because the contract set forth that all further collection proceedings would be stayed pending final adjudication of the cases now pending in Arlington Circuit Court and Your Honor wanted to know just what cases they were and that an affidavit should be filed. That affidavit is now filed. These cases are pending.

The Court: What is the protective order that you seek?

Mr. Ellis: The protective order that we seek, Your Honor, is that Miss Janousek not be permitted or be restrained from filing any further notices to take deposition, any further collection proceedings, any further action in this court to collect judgment, until the Arlington Circuit Court cases have been completed, which is in the terms of the agreement.

The Court: Then you base your request on an agreement?

Mr. Ellis: On the contract with Miss Janousek, Your Honor, which has been made a part of our motion. We filed a copy of that with the first motion. (Tr. 38, 39)

The Court: Where is the contract?

Mr. Ellis: The contract should be attached to our motion. (Tr. 40)

The Court: . . . I think on the basis of this agreement you are entitled to a stay until the actions pending at the time of the agreement are brought to a close, but not any action instituted subsequently. You may submit an order accordingly. Serve a copy on Miss Janousek. (Tr. 47)

Miss Janousek: I have accepted the contention of judgment debtor Price's counsel that it is an agreement. I have accepted no contention that I am bound not to take depositions. (Tr. 48)

* * * *

Order (appealed July 12, 1966) Filed June 13, 1966

Upon consideration of the motions to require payment of moneys and to adjudge Richard W. Galiher in contempt of court, it is by the Court this 13th day of June, 1966, ORDERED that the motion to require payment of moneys be and is hereby granted and Eunice Janousek be and she is hereby ordered to pay to the plaintiff

Herbert M. Neyland the sum of $6,041.00 or to pay Herbert M. Neyland the sum of $4,591.00 and Richard W. Galiher, his attorney, the sum of $1,450.00, and it is further, ORDERED that the motion to adjudge Richard W. Galiher in contempt of Court be and is hereby denied. (S) Alexander Holtzoff, Judge

* * * *

Order (appealed July 12, 1966) Filed June 28, 1966

Upon consideration of the motions of the defendant, Weldon A. Price, that Eunice Janousek stay discovery, collection and execution proceedings against the defendant, it is by the Court this 28th day of June, 1966, ORDERED that the motions of the defendant Weldon A. Price that Eunice Janousek stay discovery, collection and execution proceedings arising out of her interest in this case, as set forth in the order of this Court executed by Judge George L. Hart, Jr. dated April 5, 1965, pending disposition of the case of Herbert M. Neyland v. Weldon A. Price, Law No. 10482, Weldon A. Price, et al. vs. William D. Dolan and Arlington Hospital Association, Law No. 9637 and Weldon A. Price v. Aetna Casualty and Surety Co., Law No. 9504 pending in the Circuit Court Arlington County Virginia be, and the same hereby are granted. (S) Alexander Holtzoff, United States District Judge.

* * * *

BRIEF OF APPELLEE, WELDON A. PRICE AND APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,390

EUNICE JANOUSEK, *Appellant*

v.

WELDON A. PRICE, RICHARD W. GALIHER, HERBERT M. NEYLAND, *Appellees*

On Appeal from the United States District Court for the District of Columbia

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Attorneys for Weldon A. Price
1010 Vermont Avenue, N. W.
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STATEMENT OF QUESTIONS PRESENTED

1. Does the settlement of the cause of action between Herbert M. Neyland, et al. vs. Weldon A. Price in the District Court for the District of Columbia and the settlement of the cases involving Weldon A. Price in the Circuit Court of Arlington County, Virginia, now cause the matter on appeal before this Honorable Court to be moot?

2. Is the appellant bound by her own agreement to forego discovery, collection, and execution proceedings upon receipt of $7,250.00 from Weldon A. Price toward her claim for attorney's fees?

3. Is the appellant bound by the terms of her own agreement to apply the payment of $7,250.00 by Weldon A. Price toward her interest in the amount due her for attorney's fees?

4. Is the appellant entitled to more than 20 per cent of the amount collected on the judgment?

INDEX TO BRIEF

INDEX TO APPENDIX

United States Court of Appeals

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BRIEF OF APPELLEE, WELDON A. PRICE

COUNTERSTATEMENT OF CASE

This case pertains to a dispute involving attorneys' fees arising out of the case of Herbert M. Neyland, et al. vs. Weldon A. Price, et al. in the lower court. Joseph O. Janousek was one of the original attorneys representing

the Neylands but as trial time approached, Richard W. Galiher was brought into the case as co-counsel and as the trial attorney. A judgment totaling $120,000.00 was entered against Weldon A. Price in March, 1962. All but $50,000.00 plus interest was paid on this judgment. Appellant, assignee of Joseph Janousek, filed a Petition to Enforce Attorney's Lien. An Order was entered on April 5, 1965 by Judge George Hart providing that " . . . 20 per cent of the said collections on said judgment less the sum of $240.88 owed by Joseph O. Janousek to Herbert M. Neyland is to be paid to Eunice Janousek, and 20 per cent of the collection on said judgment is to be paid to Richard W. Galiher, these amounts totaling 40 per cent and representing the attorneys fees to be charged by the said Joseph O. Janousek and Richard W. Galiher in their representation of the plaintiffs in this action."

Appellant filed a notice to take the deposition of Weldon A. Price. This notice was opposed, but on August 26, 1965 Judge William B. Jones signed an Order compelling Weldon A. Price to appear for the taking of the deposition. On September 1, 1965, there was pending in the Virginia Supreme Court of Appeals the case of *Weldon A. Price* vs. *Aetna Casualty and Surety Co.* This was a case filed by Dr. Price against his liability insurance carrier, the carrier who represented Dr. Price in the Neyland suit) alleging that Aetna was guilty of bad faith in refusing to settle the Neyland case within the policy limits. At the same time there was pending in the Arlington Circuit Court the following cases: *Herbert M. Neyland* v. *Weldon A. Price, et al.,* Law No. 10482, a suit against Dr. Price's partnership to enforce the collection of the balance of $50,000.00 due Herbert M. Neyland; the case of *Weldon A. Price, et al.* vs. *William D. Dolan and Arlington Hospital,* Law No. 9637, alleging concurrent negligence on the part of the defendants which contributed to the judgment against Dr. Price by the Neylands; and the case of *Weldon A. Price* vs. *Aetna Casualty and Surety Co.,* Law No. 9504, alleging that Dr. Price was

covered under an additional insurance policy issued by the defendant having to do with the Neyland judgment.

Appellant prepared a "Stay Agreement and Receipt" signed by herself and Dr. Price wherein she accepted the sum of $7,250.00 which sum was to ". . . be credited as a payment on my (Janousek) said judgment . . .", and further that ". . . there shall be no proceeding or action taken in either court (U. S. District Court for the Eastern District of Virginia or the U. S. District Court for the District of Columbia) by either Eunice Janousek or Weldon A. Price, until Weldon A. Price has completed his litigation against The Aetna Casualty & Surety Co. in the Supreme Court of Virginia and in the Circuit Court of Arlington County . . . (and those pending in Arlington Circuit Court . . ." (Supplementary Brief for Appellant and Appendix, page 9-SA).

On January 17, 1966 the Supreme Court of Appeals of Virginia reversed a judgment that had been in favor of Dr. Price in his suit against Aetna for bad faith. On April 7, 1966, and *while the aforementioned cases were still pending in the Arlington Circuit Court,* appellant filed a notice to take Dr. Price's deposition. Dr. Price filed motions for a protective order on the basis of the Stay Agreement, which motions were granted by the court on June 28, 1966. This appeal followed.

Since the entry of the aforementioned Order, Aetna Casualty and Surety Co. paid to Dr. Price the sum of $45,000.00 in settlement of the cases pending against it by Dr. Price in the Arlington Circuit Court. A $1,000.00 payment was made to Dr. Price by the Arlington Hospital Ass'n in the aforementioned case of *Price* v. *Arlington Hospital Ass'n.* The aforementioned cases pending in the Arlington Circuit Court were, therefore, dismissed.

A full and final settlement of the *Herbert M. Neyland* v. *Weldon A. Price* case pending in the U. S. District Court for the District of Columbia was made on November 8,

1966. This settlement was for the judgment and interest and was in the amount of $52,500.00, $42,000.00 of which, plus $240.88 costs due from Janousek to Neyland, was paid to the Neylands and Richard W. Galiher. The remaining 20 per cent of the amount collected ($10,500.00) less $7,250.00 and $240.88 paid as costs, or a total of $3,009.12 is being held by Weldon A. Price who has filed a Motion for Leave to Pay Money Into the Court and for a Release of Judgment and all Liens.

SUMMARY OF ARGUMENT

1. The settlement of the *Herbert M. Neyland, et al.* vs. *Weldon A. Price* case, and the dismissal of those cases pending in the Arlington Circuit Court, mentioned in the agreement between the parties, out of which arose the dispute to stay collection proceedings now establishes as moot the issues raised pertaining to the Stay Order of the lower court.

2. Appellant's agreement to stay collection proceedings pending the outcome of other litigation is binding upon her, and she cannot now be heard to say that the lower court erred in holding her to her agreement. Appellant's contention that the decision in the Virginia Supreme Court of Appeals case involving bad faith was res judicata as to those cases pending in the Arlington Circuit Court, is completely without merit and only serves to highlight appellant's ignorance of the law.

3. Appellant's agreement to apply the $7,250.00 payment toward her judgment is equally binding upon her. She cannot accept consideration for the agreement and then ignore the basic reason for entry into the agreement by Dr. Price. To now say that the application of the $7,250.00 was not intended to be applied toward her personal interest in the judgment against Dr. Price, when the agreement itself is clear as to this point, is indeed baffling to this defendant and is completely without merit.

4. The order of the lower court establishes appellant's interest in the amount collected on the judgment at 20 per cent. The total amount collected subsequent to entry of the Order was $52,500.00. She cannot now be heard to say that she is entitled to more than 20 per cent of the amount collected.

ARGUMENT

1. The Order from which appellant appeals has to do with her right to proceed with collection on her interest in the judgment obtained by Herbert M. Neyland against Weldon A. Price. The lower court stayed her right to proceed based upon the Stay Agreement entered into between the parties, pending the outcome of cases pertaining to the Neyland matter filed in the Arlington Circuit Court. The Neyland case has now been settled, as well as those cases pending in the Arlington Circuit Court which were recited in the protective Order of the lower court. The settlement of the Neyland case in the lower court also provides a release of the judgment obtained by Herbert M. Neyland and Richard W. Galiher against Eunice Janousek compelling Eunice Janousek to pay the sum of $6,041.00. Since all cases have been settled, the matter of the protective Order of June 28, 1966 and the Judgment Order of June 13, 1966 against Eunice Janousek are now moot.

2. The correctness of the Order of June 13, 1966 against Eunice Janousek will not be commented upon by this appellee since it was obtained by Richard Galiher and the plaintiff, and further that the judgment has been released by reason of the settlement agreement filed in the United States District Court for the District of Columbia.

The propriety and correctness of the Order of June 28, 1966 cannot with logic or law be attacked. There seemed to be no question in appellant's mind that she was bound by her agreement to forego collection proceedings pending the outcome of certain litigation brought by

Dr. Price in Virginia. No action was taken by appellant to attempt further collection proceedings following her acceptance of $7,250.00 on September 1, 1965 and her executing the Stay Agreement and Receipt. It was only after the Virginia Supreme Court of Appeals reversed the "bad faith" case against Dr. Price that appellant filed her notice to take Dr. Price's deposition. In response to appellee's motion for protective order, citing the Stay Agreement, appellant argued that since the Virginia Court of Appeals reversed the "bad faith" case, she could now proceed. This argument completely overlooked the fact that the agreement provided for a stay pending disposition of ". . . his (Price's) litigation against the Aetna Casualty Company in the Supreme Court of Virginia *and in the Circuit Court for Arlington County . . . (and those pending in Arlington Circuit Court).*" The fact that there were still cases pending in Arlington Circuit Court seemed to make little impression on appellant. Perhaps her ignorance was predicated upon her belief that disposition of the Virginia Court of Appeals case somehow affected Dr. Price's other cases which were pending in the Arlington Circuit Court. Just how an adjudication of the "bad faith" issue could affect Dr. Price's right to hold Aetna Casualty Company liable under another policy issued to his partner, the issue raised in the case of *Price* v. *Aetna,* Law No. 9504, escapes our imagination. An equally absurd contention would be that Dr. Price's suit against Arlington Hospital and Dr. Dolan, and the suit by the Neylands against the partnership of Dr. Price and Dr. Detwiler, was finally terminated by the bad faith case. Res judicata is only applicable when both the parties and the issues are the same. These conditions did not exist in any of the pending Arlington cases.

Appellant's claim that the Stay Agreement lacked consideration and was, therefore, invalid, overlooks the fact that at no time did she repudiate or tender back to Dr. Price the $7,250.00 paid to her.

It should be further noted that a considerable dispute existed between Dr. Price and Aetna Casualty and Surety Co., Arlington Hospital Ass'n and Dr. William Dolan, as to who was legally responsible for the payment of the baance of the judgment obtained against Dr. Price. This dispute was eventually resolved when Aetna paid $45,000.00 on a total settlement of $52,500.00. The payment of $7,250.00 by Dr. Price was made at a time when the final responsibility for the payment of the judgment was in dispute and would most certainly be a detriment to him which supports consideration. The fact that appellant did not have to proceed with further discovery or attachment proceedings in an effort to collect money also supports the contention that there was consideration.

3. Appellant's contention that the $7,250.00 was merely a separate consideration paid solely to forego discovery depositions and was not to be applied to her interest in the amount due her arising out of the judgment, completely and arrogantly disregards the very terms of her agreement. The agreement cites in plain language that ". . . this payment of $7,250.00 shall be credited as a payment on my said judgment . . ." There is no conceivable argument or sham which appellant may attempt to present to this Honorable Court that can change the very essence of the contract. There can be no stronger or more compelling argument by appellee than merely referring this Honorable Court to the terms of the "Stay Agreement and Receipt", (Supplementary Brief for Appellant and Appendix, page 9-SA).

4. The final question which this Honorable Court may wish to decide is the matter of appellant's interest in the judgment. Her interest in the judgment was fixed by the Order of the U. S. District Court for the District of Columbia, executed by Judge Hart on April 5, 1965, (Supplementary Brief for Appellant and Appendix, page 7-SA), which followed appellant's Petition to Enforce Attorney's

Lien. Appellant's brief alleges that her interest in the fee is $10,000.00 plus interest since the date of judgment. This is apparently based on the figure of 20 per cent of the judgment of $50,000.00. This contention is not warranted when we examine the Order providing for her fee. This Order provides ". . . that in the event that further payments are collected on the unsatisfied judgment which the plaintiff, Herbert M. Neyland, has against the defendant, Weldon A. Price, that 20 per cent of the said *collection* on said judgment less the sum of $240.88 owed by Joseph O. Janousek to Herbert M. Neyland, is to be paid to Eunice Janousek, . . . these amounts totalling 40 per cent and representing the attorneys' fees to be charged by the said Joseph O. Janousek . . . in their representation of the plaintiffs in this action." It should be noted that nowhere in the Order does it provide that appellant is entitled to a fixed monetary amount such as $10,000.00 claimed by appellant. It merely provides that she is entitled to 20 per cent of the amount *collected.* The total amount collected was $52,500.00. 20 per cent of $52,500.00 is $10,500.00 less the credit of $7,250.00, less the credit of $240.88 already paid by Dr. Price, leaving a balance due of $3,009.12. This is the amount of money offered by Dr. Price in his Motion for Order Granting Leave to Pay Money into Court and for Release of Judgment and All Liens now pending in the lower court.

Respectfully submitted,

ANTHONY J. SICILIANO

SICILIANO & DALY
Attorneys for Weldon A. Price
1010 Vermont Avenue, N. W.
Washington, D. C. 20005

APPENDIX

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 4231-56

SUSANNE NEYLAND, as next friend of MICHELE MARIE NEYLAND, an infant and HERBERT M. NEYLAND, *Plaintiffs*,

v.

WELDON A. PRICE, M. D., ET AL., *Defendants*.

Motion of Defendant, Weldon A. Price, for Order Granting Leave to Pay Money Into Court and for Release of Judgment and All Liens

Comes now the defendant, Weldon A. Price, by counsel, and moves this Honorable Court for an order granting leave to pay into the registry of the Court the sum of $3,009.12 and for an order directing the clerk to mark the judgment and all liens as having been paid and satisfied, and for reason therefor states as follows:

1. Judgment was entered in this case in favor of Susanne Neyland as next friend of Michele Marie Neyland, an infant, in the sum of $20,000.00 plus costs and interest, which judgment has been paid and satisfied.

2. Judgment was entered in this case in favor of Herbert M. Neyland in the amount of $100,000.00 plus costs and interest on March 10, 1962. The sum of $50,000.00 plus interest and costs through July 25, 1963 in the amount of $8,250.00 was paid into the registry of this Court.

3. By order of this Court dated April 5, 1965, Richard W. Galiher and Joseph O. Janousek were each granted 20% of the total sums collected on the judgments as attorneys' fees, less the sum of $240.88 from the share of Joseph O. Janousek for costs to be paid to Herbert M. Neyland.

4. Herbert M. Neyland, individually and with the endorsement and approval of his attorney, Richard W. Galiher, has accepted the sum of $52,500.00, less credits, as settlement of the balance due on the unpaid judgment, interest and costs; more fully described and referred to in the attached release. This release provides for a payment of 20% of the settlement of $52,500.00 to the registery of the Court for the claim of Eunice Janousek, (assignee of Joseph O. Janousek) less a credit of $7,250.00 heretofore paid to Eunice Janousek by the defendant on September 1, 1965, less a credit of $240.88 paid to Herbert M. Neyland for costs, or a total payment to Eunice Janousek in the sum of $3,009.12, computed as follows:

Total settlement of unpaid balance		$52,500.00
Eunice Janousek (20% of amount collected)	$10,500.00	
Less credit of $7,250.00		
Less credit of $ 240.88	7,490.88	
	$ 3,009.12	

5. There has been filed a notice of lien for attorney's fees by attorney, John A. Kendrick filed in this Court and in the United States District Court for the Eastern District of Virginia, Alexandria Division, against Eunice Janousek. The defendant herein is without sufficient information or knowledge to form an opinion regarding the validity of this claim.

Respectfully submitted,

SICILIANO & DALY

By

Attorneys for Defendant, Price
1725 K Street, N.W.
Washington, D. C. 20006
524-5400

Agreement and Release

In consideration of the sum of Fifty Two Thousand Five Hundred and 00/100 Dollars ($52,500.00) to be paid as directed below, Herbert M. Neyland hereby releases, acquits and forever discharges Dr. Weldon A. Price, Dr. Robert H. Detwiler, Dr. Donald C. McCollum, Dr. Charles K. Latven, Dr. William Dolan, Arlington Hospital Association, and Aetna Casualty and Surety Company, their agents and servants, successors and assigns, heirs, executors and administrators and all other persons, firms and corporations, of and from any and all actions, causes of action, claims, demands, damages, costs, loss of service, expenses and compensation which Herbert M. Neyland may now or may hereafter have, on account of, or arising out of any matter or thing which has happened, developed or occurred, relating to the birth and treatment thereafter of Michele Marie Neyland, an infant. Payment of this sum shall also be a full and final satisfaction of the unpaid balance due on the judgment, interest and costs obtained by Herbert M. Neyland against Weldon A. Price, in the United States District Court for the District of Columbia, Civil Action No. 4231-56, and shall operate as a release of all liens accruing to Herbert M. Neyland or to Richard W. Galiher, and shall further operate as a release of the order obtained by Herbert M. Neyland and Richard W. Galiher against Eunice Janousek compelling Eunice Janousek to pay the sum of $6,041.00.

Payment of the aforementioned sum shall be as follows:

Herbert M. Neyland and Richard W. Galiher, his attorney	$42,000.00
Amount due Eunice Janousek, 20% of amount collected or $10,500.00	
Less amount heretofore paid to Eunice Janousek by Weldon A. Price	7,250.00
Less costs to be paid to Herbert M. Neyland by Eunice Janousek	240.88
Registry of U.S. District Court for the District of Columbia for balance due Eunice Janousek	3,009.12
	$52,500.00

It is further agreed that Weldon A. Price and Robert H. Detwiler agree to indemnify and hold harmless the said Herbert Neyland and Richard W. Galiher from any and all claims, demands and causes of action that may be brought against them by Eunice Janousek or Joseph Janousek, their administrators, successors or assigns, as a result of the settlement of the claim of Herbert Neyland against Weldon Price, arising from the judgment secured in Civil Action No. 4231-56 in the United States District Court for the District of Columbia. This will include the complete defense of any claim that may be brought against them in said Civil Action No. 4231-56, or in any other proceeding."

/s/ HERBERT M. NEYLAND
Herbert M. Neyland

/s/ RICHARD W. GALIHER
Richard W. Galiher

/s/ WELDON A. PRICE
Weldon A. Price

/s/ ROBERT H. DETWILER
Robert H. Detwiler

Herbert Neyland appeared before
me personally Nov. 3, 1966

LURANA J. COWAN
Notary Public My com. expires 1-20-69

District of Columbia, ss:

On Nov. 4th, 1966 before me personally
appeared Richard W. Galiher and ack-
nowledged the foregoing as his act
and deed.

BARBARA A. SHIPP
Notary Public, D. C.
My Commission Expires May 14, 1971

Subscribed and sworn to before me this 8th day of November, 1966, Weldon A. Price and Robert H. Detwiler.

ROSE M. WITTEN
Notary Public
My Commission expires 5/16/70

BRIEF OF APPELLEES GALIHER AND NEYLAND

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,390

EUNICE JANOUSEK,
Appellant,

v.

WELDON A. PRICE,
RICHARD W. GALIHER,
and
HERBERT M. NEYLAND,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

RICHARD W. GALIHER

1215 - 19th Street, N.W.
Washington, D.C.

Attorney for Herbert M. Neyland and Himself

STATEMENT OF QUESTION PRESENTED

Should this case be remanded to the lower Court for the purpose of setting aside the Order of June 13, 1966?

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,390

EUNICE JANOUSEK,
Appellant,

v.

WELDON A. PRICE,
RICHARD W. GALIHER,
and
HERBERT M. NEYLAND,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF OF APPELLEES GALIHER AND NEYLAND

These Appellees have advised Appellant that they were willing to join with her in requesting the lower court to set aside its order of June 13, 1966, and that no claim was being made against her under the terms and conditions of said order. Appellant however has indicated an unwillingness to join in such action. The appeal taken here against these appellees is based only on the lower court order of June 13, 1966.

Since appellees are willing to set said order aside, this court should remand this part of the appeal to the lower court so that the order of June 13, 1966, can be set aside, and thereafter the appeal as to these appellees should be dismissed.

Respectfully submitted,

RICHARD W. GALIHER

1215 - 19th Street, N.W.
Washington, D.C.

Attorney for Herbert M. Neyland and Himself

REPLY BRIEF

(To Brief of Appellees Galiher and Neyland)

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

No. 20,390

EUNICE JANOUSEK

Appellant

v.

WELDON A. PRICE
RICHARD W. GALIHER
HERBERT M. NEYLAND

Appellees

Appeal From The United States District Court

For The District Of Columbia

EUNICE JANOUSEK
Appellant, In Proper Person
284 Benjamin Franklin Station
Washington, D. C.

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

No. 20,390

EUNICE JANOUSEK

Appellant

v.

WELDON A. PRICE
RICHARD W. GALIHER
HERBERT M. NEYLAND

Appellees

REPLY BRIEF

(To Brief of Appellees Galiher and Neyland)

The Galiher-Neyland brief is the fourth motion to dismiss the appeal. Though not elaborated, the motion is made upon contentions identical to those advanced in some of the previous motions to dismiss the appeal, all denied by the Court.

The brief of these appellees again refers inferentially to the "release" -- wholly a sham in so far as the appellant's judgment lien and interests are concerned -- contrived between the judgment debtor Price and the appellees Galiher and Neyland about last November 4th as this appeal was going forward. In it they included, without appellant's authorization or knowledge, a "release" of her judgment lien for her. And in their self-constituted "release" the appellees Galiher and Neyland declare the appellant is no longer indebted to them under the appealed order of June 13th -- this, however, inseparably joined

with and conditioned upon the Galiher-Neyland "release" of the appellant's judgment lien for her for $3,009.12 -- representing but a fractional part of the actual amount of her lien and the amount owed her by the judgment debtor.

Hence the brief and fourth motion of the appellees to dismiss the appeal simply accentuates one of the appeal's primary points, set out in the two briefs for the appellant, awaiting the Court's consideration and decision: Does the appellant, owner of an attorney's lien fixed in amount by the District Court's order on the petition to enforce the lien, have an independent judgment lien and right to collect it by execution against the judgment debtor Price in accordance with this Court's decisions and traditional practice?

Disregarding this Court's rulings in Falcone v. Hall, 98 U.S. App. D.C. 363, 235 F2d 860, Sullivan v. Tobin, 42 App. D. C. 430, Kellogg v. Winchell, 51 App. D. C. 17, 273 Fed. 745, and the several other decisions previously cited in the briefs for appellant, the appellee Galiher wrote the appellant on January 24, 1967, employing the terms of the contrived "release" of November 4th, and "advised Appellant that they were willing to join with her in requesting the lower court to set aside its order of June 13, 1966," upon the terms of that sham.

Since the above quote from page 1 of their brief refers to the appellee Galiher's letter of January 24th to the appellant, her response to it on January 31st, is made a part of this reply to their brief:

> "Dear Mr. Galiher: - Your letter of January 24th, written to serve your current motions in the Court of Appeals, and appended to them (viz. "Motion To Extend Time For Filing Brief, etc." and "Motion For Leave To File Motion To Extend Time For Filing Brief, etc."), attempting to suggest, repetitiously, that the appeal on Judge Holtzoff's order of June 13, 1966 is moot, has no more foundation than the stream of motions you and the judgment debtor Price have filed to dismiss the appeal -- all denied by the Court.

"Not only has there been no change whatever in the status of the two orders of Judge Holtzoff now before the Court of Appeals for review and determination, but your current dilatory motions in the Court of Appeals repeat and are based on grounds identical to those which you and the judgment debtor employed in your third motion to dismiss the appeal -- denied by the Court on January 13th.

"And I call your attention to the last sentence of the Court's order denying the appellees' third successive motion to dismiss the appeal: 'No further extension of time for filing appellees' brief will be granted except for extraordinary and unforeseable cause shown.'

"As you well know, your letter of January 24th, and your baseless and repetitious assertions in it, are made on the false premise that the release, so-called, conceived between you, Neyland, the appellee Price and his attorneys on or about November 4, 1966 affects my judgment lien. Undertaken without my knowledge, much less my participation or signature, the "release" is, as to my independent judgment lien and the interest and indebtedness of the judgment debtor Price to me thereunder, a nullity without legal standing or effect.

"In that "Agreement and Release," so-called, you and Neyland absurdly recite a "release" to the judgment debtor Price of my independent judgment lien of $10,000 -- which with interest to October 29, 1966 totalled $11,950 -- for $3,009.12.

"And it is in that sham "release" and a part of the same sham undertaking contrived between you, Neyland, the judgment debtor Price and his attorneys, that you and Neyland also recite that you will "release" me of your claims -- which is the basis of the same statement you presently make in your letter of January 24th -- "for monies due as a result of the lower court's order" of June 13, 1966 directing me to pay you $6,041.

"This sham transaction was contrived between you, of course, after the appeal had been pending several months and not long after my initial brief had been filed in the Court of Appeals, pointing out not only that Judge Holtzoff had failed in the order of June 13th to recognize and enforce my rights as an individual judgment lienor, as required by Falcone v. Hall, 98 U.S. App. D.C. 363, and other decisions, but that his two orders are inseparably rooted in other errors which are specified and argued in my two briefs filed in the Court of Appeals on September 21st and December 20th.

"Notwithstanding the fact these errors and questions are before the Court of Appeals for determination, you the appellees, through the appellee Price, on or about December 1st filed a motion in the District Court in attempted circumvention of the appeal.

"That motion would have the District Court predetermine and decide the very questions now pending before the Court of Appeals. It would have

the District Court usurp the appellate jurisdiction and the Court of Appeals' present exclusive control of the litigation. And in total disregard of long-established practice and all legal authority, that motion would have the District Court ignore the requirement upon it to maintain the status quo there while the appeal is in progress -- for your motion asks for District Court rulings that would dispose of the litigation and the appellate questions before those questions could be reached and determined in the Court of Appeals in the normal course of the Court's business.

"That motion of you appellees in the District Court would have the lower court compound existing error with further error. And this is the motion you refer to in your current motion in the Court of Appeals in your attempt to delay the filing of a brief that under the Court of Appeals' orders was due on January 28th.

"By the above "Agreement and Release," so-called, and its sham and legally null recitals on my judgment lien and my liability under the appealed order of June 13, 1966 -- emphasized now even more by your letter of January 24th -- you attempt to coerce me into accepting $3,009.12 on my judgment lien -- which with interest to January 29, 1967 is $12,000 -- proffering a "release" of my liability for "the payment of monies" under the order of June 13th; an order whose validity, putting it in its very best light, is exceedingly doubtful and which is at this moment in the Court of Appeals, with my briefs filed, awaiting determination.

"I will not be so coerced. (S) Eunice Janousek"

For her further reply to the brief of the appellees Galiher and Neyland, the appellant respectfully refers the Court to her Reply Brief to the brief of the appellee Price, pages 15-17 and Appendix to Reply Brief, pages App-1 through App-7.

Respectfully submitted,

EUNICE JANOUSEK
Appellant, In Proper Person
Box 284 Benjamin Franklin Station
Washington, D. C.

REPLY BRIEF

(To Brief of Appellee Price)

UNITED STATES COURT OF APPEALS

For the District of Columbia

No. 20,390

EUNICE JANOUSEK

Appellant

v.

WELDON A. PRICE
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Appeal From The United States District Court

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INDEX

CASES

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

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WELDON A. PRICE
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HERBERT M. NEYLAND

Appellees

REPLY BRIEF

(To Brief of Appellee Price)

The brief filed by Weldon A. Price is not responsive to the legal questions foremost in this appeal

It supplies no authority whatever in opposition to the appellant's individual judgment lien in and upon the malpractice judgment, a lien fixed in amount by District Court order following hearing and adjudication of the petition to enforce an attorney's lien, nor any authority whatever in opposition to appellant's independent and individual right to enforce her judgment lien and collect the full amount due her on her judgment lien in accordance with this Court's decisions.

It supplies no authority whatever in departure from the basic requirement that every contract to be valid must be supported by adequate consideration, and

that a payment made on a judgment does not supply consideration for or give any legal life to a contract to stay execution on that judgment.

It supplies no authority whatever, nor does it attempt to dispute the equally basic rule of estoppel which is binding upon the appellee who, to serve his needs and advantages of the moment in his evasion of the appellant's judgment lien, has taken inconsistent legal positions, diametrically opposed, in the course of this case in the District Court, to the detriment and disadvantage of the appellant, as presented on page 12 of the Supplementary Brief for Appellant.

The appellee Price refers to no decisions or authorities of any sort to support any counterposition on the questions this appeal presents because, it is respectfully submitted, there are none to aid him. Hence his brief offers not a single citation or legal reference, skirts the legal questions before the Court and substitutes a ramble of several pages, some of it incorrect and factually unsupportable, most of it unrelated to the appeal, so far afield, indeed, that much of what is said is not even within the record before this Court.

I

The counterstatement's contents, in greater part extraneous to the appeal -- being principally assertions and conclusions self-proclaimed by the brief's compilers -- show little concern for remaining within the appellate record, and even less compunction for veracity and accuracy in those of their recitals which do happen to fall within the record's limits.

Typical of the level of accuracy throughout the brief are misstatements such as these made in the counterstatement in the face of facts of record directly to the contrary:

On page 2 the appellee untruly says: "Appellant, assignee of Joseph Janousek,

filed a Petition to Enforce Attorney's Lien."

The petition was not, of course, filed by the appellant but by her predecessor in interest, an attorney. He filed it on August 23, 1963, more than eight months before the appellant, by assignment, acquired his lien. It was filed shortly after his client's breach of a contingent fee contract -- a contract which provided, in the custom of the profession, for payment of the attorney in percentages of the judgment sought in the malpractice action against the appellee Price.

And it necessarily followed that the District Judge -- after the hearing on the petition, during which the contract and breach pleaded in the petition were proved, and the contract terms in percentages were in evidence before the Court -- in the order of April 5, 1965 entered on the petition fixed the amount of the judgment lien by percentage in conformity with the percentage recitals in the petition, the contract and the evidence before him.

And the order of April 5, 1965 accordingly vested the judgment lien of twenty percent in the appellant who, as the pleadings and evidence also before the Court showed, had acquired full title and rights to the attorney's lien by an assignment made on April 30, 1964. 1/ Portions of the petition, showing its date of filing in the District Court on August 23, 1963, the assignment of the judgment lien to the appellant on April 30, 1964, the District Court order of January 22, 1965, based on the assignment, substituting the appellant as the lienor in interest, appear at

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1/ The contentions again repeated in the Price brief before this Court, that the order of April 5, 1965 on the lien petition does not say appellant has a $10,000 judgment lien but only that she is entitled to twenty percent of amounts collected on the malpractice judgment, have already been made by the judgment debtor in his numerous motions obstructing collection in the District Court. This contention was made, fully urged and argued, and rejected by the Court in the order of August 25, 1965 (Judge Jones) denying the motion which made it among other contentions. Neither the judgment debtor nor his co-appellees Richard W. Galiher

(footnote continued on page 4)

pages 1-SA through 7-SA in the Supplementary Brief for Appellant and Appendix, and also referred to in items 1-E, 1-G and 1-H in the Joint Appendix following the Brief for Appellant -- all before the attorneys for the appellee Price as they prepared his brief.

Again at page 3 of his brief the appellee misrepresents that "Appellant prepared a 'Stay Agreement and Receipt' signed by herself and Dr. Price."

This document (dated September 1, 1965, urged by the appellee's attorneys in the District Court not as a receipt for payment on the judgment but as an enforceable contract to stay execution in return for which, they argued, the appellee had paid $7,250, and on the basis of that position and argument persuaded the District Judge to enter the order of June 28, 1966 enjoining execution) was not signed by

(footnote 1 continued)
and Neyland took an appeal from that order.

The appellant, in opposition to this motion and contention of the judgment debtor in the District Court, where he tried, litigiously, to generate controversy where none exists, pointed out his incessant flood of meritless motions to obstruct collection of the judgment against him, and the utter sham of his contention that the order of April 5, 1965 did not recite that appellant had a $10,000 judgment lien. And the appellant respectfully submits that the following, from one of her memorandums filed in the District Court, continues to apply to the repetition of this contention of the appellee in this Court (excepting only that the amount of interest given has now increased):

"The judgment debtor needs no reminding that there continues unpaid on the judgment of $100,000 against him in this Court the sum of $50,000, with interest at 6% from July 1963. Nor does he need assistance in arriving at the amount he owes Miss Janousek under the judgment and this Court's order:

20% of $50,000 :	$ 10,000
Interest at 6% on $10,000 for 24 months (through July 1965) :	1,200
Total :	$ 11,200 "

(From Memorandum of Points and Authorities in Opposition to Motion to Dismiss, Terminate and/or Suspend Taking of Deposition on Oral Examination, filed July 14, 1965; item 2D, 2-JA, Brief for Appellant and Joint Appendix.)

Weldon A. Price or his attorneys, as is evident on the original thereof filed in the District Court by the appellee on April 11, 1966, and now a part of the record on appeal.

It bears only the signature of the appellant. In convenient consequence of his lack of signature, the appellee's attorneys saw reserved to themselves an open and unlimited field to shift position as they might at any moment choose, as might at any stage best suit the appellee, and to come before the District Court in later motions and argument -- as they did -- and urge that the "Stay Agreement and Receipt" was in fact a binding contract to stay execution by the appellant in return for which they had paid her a consideration of $7,250.

From a record replete with this position and argument in support of their motion demanding that appellant be prohibited from executing because of the stay contract they urged, the appellant at this point merely offers one example from the argument of the appellee's attorneys before Judge Holtzoff on June 8, 1966:

By Mr. Ellis (one of several attorneys for the judgment debtor):

> ". . . At the time that we appeared at the deposition we entered into an agreement with Eunice Janousek, which agreement is made a part of my motion in this file therewith. The crux of the agreement, Your Honor, was and is that in consideration of the payment of $7,200 to Miss Janousek she was to forestall and forego further discovery proceedings and any other attempts at collecting the monies which she alleged were due." (underscoring added)
>
> (From Transcript of Motions Proceedings on June 2 and 8, 1966, pages 5 and 6; also in Supplementary Brief for Appellant and Appendix, pages 11-SA and 12-SA.)

The Court is respectfully referred to pages 8 through 12 of the Supplementary Brief for Appellant, detailing the appellee's vehement and continuous insistence in his motions, and in the hearing and proceedings on them before Judge Holtzoff in

June 1966, that the $7,250 had been paid in return for and was the consideration essential to the validity of the contract to stay execution they urged -- which the Court accepted and upon which they secured the injunctive order of June 28, 1966 staying execution by the appellant.

In his brief the appellee comes before the Court of Appeals in an-about-face and tries to shift to exactly the opposite of the legal position he took in the District Court on his motions and in argument before Judge Holtzoff in order to secure the stay order at the expense, delay and disadvantage of the appellant. It is respectfully submitted that he is estopped from doing so. This is taken up in section numbered II of this reply.

The appellee's very hasty -- and equally incomplete and inaccurate -- allusion on page 2 of his brief to the order of Judge William B. Jones on August 26, 1965 "compelling Weldon A. Price to appear for the taking of his deposition" is replied to in section numbered III of this brief.

In section numbered IV reply is made to the appellee's misrepresentation on page 3 of his counterstatement that "A full and final settlement of Herbert M. Neyland v. Weldon A. Price in the U.S. District Court for the District of Columbia was made on November 8, 1966"-- as grossly untrue and no more credible than his earlier misrepresentations that the appellant filed the attorney lien petition and that Weldon A. Price signed the "Stay Agreement and Receipt," with a record showing just the contrary before this Court.

II

In the District Court proceeding, having failed in his attack on August 26, 1965 on the order of April 5th vesting appellant with a twenty percent judgment lien, and having failed in his attack on appellant's individual right to proceed with execution

and collection of the $10,000 and interest he owes her, the judgment debtor and his representatives persuaded the appellant to accept $7,250 and asked her not to proceed with execution or discovery depositions in aid of execution until after the appeal was disposed of in Aetna v. Price in the Virginia Supreme Court of Appeals. The appellant gave them the "Stay Agreement and Receipt" reciting the $7,250 as a payment on her judgment lien and as a further accomodation to the judgment debtor said in it that she would defer execution until the appeal in the Virginia Supreme Court of Appeals was over, as he had asked. 2/

The judgment debtor did not sign the document. Nor did he concede to or accept its recitals that the $7,250 was a payment on the judgment. Instead when the Virginia appeal was over, and he had suffered its loss, he came before the District Court. In his endeavor to obstruct the appellant's collection indefinitely, he contended that the "Stay Agreement and Receipt" was in reality a binding contract by which the appellant had agreed to stay execution on the judgment, that the payment of $7,250 had been made not on the judgment but in consideration for the stay contract.

2/ In the appellee's brief at page 3, where he quotes from the "Stay Agreement and Receipt," the attorney neglects to inform the Court that the last clause, that is, "and those pending in Arlington Circuit Court," is penned-in in the hand of Anthony J. Siciliano, inserted at the end of the typewritten instrument. And in volunteering his personal view (on page 4 of their brief) of the non-attorney "appellant's ignorance of the law," that attorney also displays the liberty he has felt in making misrepresentations to the appellant in the deception and overreaching he has practiced whenever he has had any dealings with her. As, for example, on September 1, 1965 when he told the appellant he wished to add the above clause to the last sentence of the "Stay Agreement and Receipt." The appellant, who is not an attorney, began to protest, saying that the recitals already in the instrument were sufficient. Anthony J. Siciliano then assured her, as an attorney to a non-attorney, that all the words "and those pending in Arlington Circuit Court" referred to was a possible retrial of the case then before the Virginia Supreme Court of Appeals in the event there should be a reversal and retrial ordered. On this misrepresentation the appellant permitted him to pen-in the clause, thus misled by him as becomes apparent by his later contrary contentions and the broader significance he now attempts, dishonestly, to attach to those words.

He made these contentions in his motions in the District Court, and before Judge Holtzoff when they came on for argument, with full knowledge of their effect. Besides the fact that his attorneys were chargeable with knowledge of the legal effect of their contentions on the stay contract, they were indeed on specific notice that the judgment debtor would have to elect whether he wished to acknowledge the recitals in the Stay Agreement and Receipt, which he had not signed, that the payment of $7,250 was on the judgment, or, on the other hand, that it had been paid as consideration indispensable to the validity of the contract to stay execution which he was urging. For the appellant on May 31, 1966 pointed this out in her memorandum opposing his motions in which he was asking the Court to prohibit her execution, insisting and urging the instrument as a contract to stay execution on the judgment against him. This is set out in the Supplementary Brief for Appellant, pages 8 to 12. 3/

He made that election, declared the instrument was a contract to stay execution and declared and re-declared that the payment of $7,250 was in consideration for the stay contract. This was the express declaration of Mr. Ellis, one of his attorneys, who argued his motions before Judge Holtzoff (see page 5 of this brief) in their

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3/ From appellant's memorandum filed on May 31st: "There is no consideration to support the 'agreement' alleged by the judgment debtor -- that is, unless the payment of $7,250 made to Miss Janousek on September 1, 1965 was not made as a payment on Miss Janousek's judgment of $10,000 (with interest at $1,250 additional accrued to that date) but was instead a payment paid solely in consideration for her agreement not to execute on her judgment until the conclusion of Dr. Price's action against Aetna then pending in the Virginia Supreme Court of Appeals. If the payment of $7,250 was paid in consideration of this alleged agreement to withhold execution on the judgment, then there has been no payment made on the judgment of Miss Janousek, and there is presently due her, therefore, the following amounts on her unpaid judgment: Principal amount of Miss Janousek's judgment: $10,000; interest due on judgment to June 1, 1966 : $1,700; total due on judgment and interest to 6/1/66 : $11,700. If, on the other hand, Dr. Price intends through his attorneys to contend that the payment of $7,250 was made as a payment on Miss Janousek's judgment and interest accrued, then there is no consideration whatever to support the 'agreement' he now alleges, because by making the payment on the judgment he was doing merely what he was legally bound to do (citing authorities). "

election to stand on and demand enforcement of a stay contract.

Upon that contract he secured the order of June 28, 1966 enjoining the appellant from collecting the money he owes her. That order has already extended through the better part of a year, preventing her collection and shielding the judgment debtor in his long evasion of his debt. And this does not consider the appellant's time, the effort and expense she has been subjected to in this litigation and an appeal brought on by the judgment debtor's shifting maneuvers through the Courts in his persistent design and striving to defeat and defraud the appellant of the money he owes her -- or any part of it he can.

His latest shift of position is attempted in his brief just filed in the Court of Appeals where -- in an-about-face, directly opposite to his contentions and urgings in the District Court that worked to secure the order of June 28th for him -- he now tries to say that the $7,250 was a payment on the judgment lien. And a supposedly mature, certainly a long experienced and courtroom-wise attorney for him comes before this Court and, against this extensive background of shifting, maneuvering and evasion, in a pose of pristine innocence plaintively pleads that he finds himself "baffled" by the appellant's position in this appeal.

The appellant respectfully submits that the appellee Price is estopped from assuming before this Court a legal position exactly opposite to that which he took and successfully maintained in the District Court, thereby securing for himself the injunctive order of June 28th on the stay contract he pleaded and urged.

This Court has frequently invoked estoppel where inconsistent legal positions have been attempted in a manner such as this.

In Jamison v. Garrett (1953), 92 U.S. App. D.C. 232, 205 F2d 15, an executrix was estopped from taking a position contrary to that she had taken in an earlier

phase of the litigation; and this Court refers to and applies "The principle stated by the Supreme Court in Davis v. Wakelee, 1895, 156 U.S. 680, 689, 15 S. Ct. 555, 558, 39 L. Ed. 578:

> ' It may be laid down as a general proposition that, where a party assumes a certain position in a legal proceeding, he may not, thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him. . . ' "

Immediately following, this Court refers to these additional cases, all applying estoppel under conditions similar to the appellee Price's attempt to shift from the position that gained him the District Court's order of June 28th to a directly contrary legal position in this appeal, to the great prejudice and detriment of the appellant: Galt v. Phoenix Indemnity Co., 1941, 74 App. D.C. 156, 159, 120 F2d 723, 726 and cases cited; Hart v. Mutual Ben. Life Ins. Co., 2 Cir. 1948, 166 F2d 891, cert. den. 335 U.S. 826; Hughes v. Ward Oil Corp., 5 Cir. 1942, 124 F2d 393; Smith v. Sheeley, 1870, 12 Wall. 358, 79 U.S. 358, 361, 20 L. Ed. 430.

The Court also discusses the estoppel doctrine on inconsistent legal positions in Parker v. Sager (1949), 85 U.S. App. D.C. 4, 174 F2d 657, holding that the better-considered view restricts its application to instances where the legal position first asserted has been successfully maintained -- just as it has by the appellee Price who secured the June 28th order by urging a stay contract supported by a consideration of $7,250. This Court then points out some of the cases to which estoppel applies:

> "The cases . . . involve situations in which a party successfully establishing a legal position in one judicial proceeding was held forbidden to contest it or to take a different position in another. For example in Assets Realization v. Roth, 1919, 226 N.Y. 370, 123 N.E. 743, wherein a party was estopped from contending that an agreement sued upon was one of guaranty by reason of his successful contention in another action that the agreement was one of indemnity, not guaranty, Mr. Justice Cordozo said: 'The defendant helped to induce that ruling when the result was to his advantage. We will not change it at his instance now, when the result is to his detriment.' "

The appellant also respectfully submits the following cases applying estoppel to inconsistent stands attempted in legal proceedings, some similar and some parallel to the appellee Price's attempted shift of position in this litigation: Livesay Industries Inc. v. Livesay Window Co. (5th Cir. 1953), 202 F2d 378, 382, cert. den. 346 U.S. 855; Eads Hide & Wool Co. v. Merrill (10th Cir. 1958), 252 F2d 80; Hanover Fire Ins. Co. v. Isabel (10th Cir. 1942) 129 F2d 111, 114; Tillman v. Tillman (1948), 84 U.S. App. D.C. 171, 172 F2d 270, cert. den. 336 U.S. 954; Cf. Iselin v. LaCoste (5th Cir. 1945), 147 F2d 791, 795; Cf. Scarno v. Central R. Co. of N.J. (3rd Cir. 1953) 203 F2d 510, 513.

To the appellant it has long seemed that the appellees, first in the District Court by their maneuvering, and now in this Court with more of it, have been trifling with judicial process. The United States Court of Appeals for the Fifth Circuit has taken that view of occurrences very similar to the occurrences in this case, and the parties' conduct (first affirming then attempting to repudiate a legal position) that parallels the conduct of the appellee Price in this case.

In Livesay Industries Inc. v. Livesay Window Co., supra, the subject was the defendant's affirmance of a patent in the lower court and that defendant's later disaffirmance of it attempted on appeal. The following language of the Court applies, it is submitted, with similar force to the judgment debtor's urging and affirmance of a stay contract in the District Court, representing its supporting consideration as the payment of $7,250, and his later repudiation of that stand presently being attempted in this appeal. Referring to the judgment on the patent the Court says:

> "Our position that the judgment estops the defendant on that issue is further supported by the authorities (cases cited), holding that where one in whose favor a judgment is rendered accepts the benefits, he is estopped from questioning the validity of the judgment in any subsequent litigation.
>
> "Further, all questions of reported cases aside, it ought to be, we think it is,

clear that upon every principle of judicial estoppel, including the estoppel arising out of inconsistent positions in legal proceedings, defendant may not, as it attempts to do here, trifle with judicial process.

"By solemn affirmation in the patent office, and thereafter by solemn affirmation in its pleadings prepared and filed by the same counsel who represents it in this suit, it affirmed the patentability of the invention and the validity of the patent. By evidence offered and argument made by the same counsel in support of the affirmation it induced the district judge, upon full and careful consideration, as evidenced in his opinion in Livesay v. Drolet, 38 F. Supp. 885, to hold the patent valid and infringed.

"During the pendency and upon the strength of the suit and afterwards upon the strength of the judgment in it, it continued to operate as a licensee. Defendant ought to be, we think it is, completely estopped from doing an about face in this case in the same court and forum and repudiating what it had before as solemnly affirmed there."

III

The appellee's skip-and-gloss-over treatment, on page 2 of his brief, of the proceedings before District Judge Jones on August 26, 1965 -- avoiding mention of his broad and several-faceted motion as a judgment debtor contesting the appellant's right to execute to effect payment of her judgment lien, implemented by his attorneys' argument to the Court on August 26th that appellant should be barred from executing because (among many reasons he advanced) she had no status in the case, she was not a party, she had no lien, she had no interest or voice in the judgment or what was to be done with it, she had no right to appear or act in the case, no right to execute on the judgment, in argument and assertions in pleadings that made the appellant simply a poacher on the preserves of the judgment debtor Price and the nicely cooperative Messrs. Galiher and Neyland with whom he was allied; and where these attorneys contended, almost incredibly, that because of the Court's order of April 5, 1965 (on the petition to enforce the attorney's lien) there was no lien or judgment inasmuch as that order provided that sums had first to be collected and there could now be no judgment or lien until some sum was collected; and that the malpractice judgment standing in Neyland's name alone was his sole property and

gave him alone the right and prerogative to decide when, and if, the collection or any part of it should be made, and Neyland had declared he did not want to execute -- amounts to putting before the Court something considerably less than half-truths.

The appellee attempts to re-project and re-argue in this appeal some of the points thus pressed in his motion in the District Court on August 26, 1965 -- all rejected by the Court and by the order of that date denying his motion.

One in particular he attempts to re-argue in this appeal is precisely the same. For in the District Court, as now in this Court again, the judgment debtor has tried to evade payment of the appellant by saying, without logic and contrary to the record and swell of decisions governing, that under the order of April 5, 1965 adjudicating the attorney's lien petition the appellant has no lien on or right in the judgment but only the vague and extremely nebulous prospect of receiving through Neyland, who breached his contract in an effort to defraud payment of the appellant's predecessor and who opposed the appellant on the petition to enforce the lien, twenty percent of such amounts as Neyland might sometime choose to collect and turn over to her.

While not in so many words in their brief in this Court, their overall contentions are identical to those in their pleadings and argument in the District Court on August 26th where they insisted that if Neyland declined to collect the judgment or any part of it, his decision would be governing, would be conclusive on Miss Janousek under the order of April 5, 1965, and that would be the end of it so far as she was concerned. 4/

4/ These vagaries appear in the record of the proceedings, presently before this Court, at various points. In the judgment debtor's "memorandum in opposition to motion for production of documents and records," for example, filed on July 29, 1965, (listed in Brief for Appellant and Joint Appendix, page 2-JA, item 2-F) which was before the District Judge with the judgment debtor's motion on August 26th, this is said in paragraphs numbered 2 and 3:

(footnote continued on page 14)

Though without grounds to do so, the judgment debtor's brief in this Court reflects that he would indeed be exceedingly pleased to be able to clamp exclusive control of the appellant's independent judgment lien in the grasp of her predecessor's faithless client who, as the judgment debtor has so often proclaimed in the District Court, does not "wish" to collect the malpractice judgment. And who, the judgment debtor now purports to tell this Court, has "settled" and "released" the appellant's judgment lien for her -- for a fractional part of the amount the judgment debtor owes her.

(footnote 4 continued)

> "The interest of Joseph Janousek is at best 20% of any sums collected and since the entire judgment may or may not be collected in toto, there is no sum certain due. An attorney's fee is not due until there is an actual sum collected and since it has not, in fact, been collected, there is nothing due . . . And for other reasons as will be advanced at the hearing of this memorandum. Siciliano & Daly (S) Anthony J. Siciliano."

This will also appear in the record of the motions proceeding on August 26, 1965:

When the above and "other reasons" had been fully put before the District Judge on August 26th, he inquired whether the judgment debtor's position was that because Neyland was going to be "polite" and not collect his judgment, Miss Janousek was therefore going to be bound by Neyland's decision and his reasons, whatever they might be. The judgment debtor's attorney declared that was correct, repeating that Miss Janousek, not being a party in the case, not being named in the judgment, and being without legal status, was attempting to proceed without right because "whatever rights, if any" she had she would derive only through Neyland, and she could not act contrary to "his wishes" or execute in her own right.

The Court rejected all of the contentions, denied the motion and asked Miss Janousek to give a date on which she wanted the judgment debtor to appear for examination. The date was set at September 1, 1965, at the hour and place specified in Miss Janousek's notice of deposition in aid of execution, against which these of the judgment debtor's numerous motions in the District Court had been filed. The Court included the order for the judgment debtor to appear on September 1st in the order denying his motions.

In their stark collusion, bearing all the earmarks of fraud, the appellees have not chosen to defer to this Court's governing rulings in Falcone v. Hall, 98 U.S. App. D.C. 363, 235 F2d 860, and the other decisions given and discussed in the Brief for Appellant at pages 13 and 14, and in the Supplementary Brief for Appellant, pages 1 through 8.

IV

In the most recent of their shifts and maneuvers the appellees, while this appeal is in progress, and some four months after it had been taken, filed a motion in the District Court (on November 29, 1966) tendering $3,009.12 and a "release" signed by Neyland, also by Messrs. Galiher and Price, in which they "released" the appellant's judgment lien for her, asked the lower court to receive the $3,009.12 they had decided was due her, and to enter the malpractice judgment and all liens as satisfied and discharged.

On December 6th the appellant moved in the District Court to stay the proceedings there, for lack of jurisdiction, during this appeal.

The appellees, through the appellee Price, then took their "release" and the motion made in the District Court on it and appended both to their third motion to dismiss the appeal, filed in this Court on December 12th.

This Court denied the appellees' third motion to dismiss the appeal on January 13, 1967. (Appendix, this Brief, App-5 to App-7)

Notwithstanding this Court had by its previous orders ordered the appellees' briefs to be filed within 15 days after the Court's disposition of their third motion to dismiss the appeal (or by January 28, 1967), and had in its order of January 13th ordered that "No further extension of time for filing appellees' brief will be granted except for extraordinary and unforeseable cause shown," the appellees Galiher and Neyland did not file their brief as the Court directed, but have lodged with the Clerk

the following flow of motions, leave to file motions, and a typewritten paper entitled "Brief of Appellees Neyland and Galiher" which is little more than a fourth motion of the appellees to dismiss the appeal:

January 24th:	Motion to extend time for filing brief on behalf of Appellees Neyland and Galiher.
January 27th:	Motion for leave to file motion to extend time for filing brief on behalf of appellees Neyland and Galiher.
January 31st:	Motion to withdraw motion for leave to file motion to extend the time for filing brief on behalf of appellees Neyland and Galiher and to substitute this motion in lieu thereof.
February 8th:	Typewritten brief of appellees Neyland and Galiher.
February 9th:	Typewritten statement of questions presented.

In their motion lodged with the Clerk on January 24th, asking until February 8th to file their brief, the above two appellees referred to the Price motion and "release" in the District Court (then calendared for hearing on February 3rd; the District Court proceedings were stayed on that date) indicating the extension was necessary because of that. Yet these two appellees in the same breath declare they have no interest in this appeal. Why, then, their continuing effort to circumvent the appeal, along with the appellee Price, their stream of motions and now a brief lodged with the Clerk that is simply, in different form, a fourth motion to dismiss the appeal?

The appellees' efforts to evade this appeal, its legal questions and this Court's jurisdiction have been as strenuous as their methods throughout to defeat payment of the appellant's judgment lien have been roughshod and unconscionable.

In their brazen, continuing effort to circumvent this Court's jurisdiction and consideration of the questions and errors they have engendered in the District Court, the appellee Price's brief, as was said at the outset, skirts all of them, replies to none of them.

Instead they refer to a "release" conceived among themselves while this appeal is in progress, in collusion and fraud on the appellant, and proffer it to the Court as a substitute for meeting the appellate questions. So far as the appellant's judgment lien and the amount owed her by the judgment debtor are concerned, the paper so conceived between them, without knowledge, assent or signature of the appellant, is without trace of life or any semblance of legal validity.

The appellant is supplementing the record on appeal with her detailed legal memorandums filed in opposition to the judgment debtor's District Court motion asking to be discharged from his unpaid judgment, and in opposition to the travesty they refer to as a "release" appended to their motion.

The Court is respectfully referred to that record and those portions of it appearing in the appendix following this reply as her response to the "release" and "settlement" the appellees refer to in their brief.

It is respectfully prayed that the District Court orders of June 13 and 28, 1966 be reversed and vacated.

Respectfully submitted,

EUNICE JANOUSEK
In Proper Person
Box 284 Benjamin Franklin Station
Washington, D. C.

APPENDIX

From Points and Authorities in Opposition to Motion of Weldon A. Price for Leave to Pay Money Into Court and for Release of Judgment and All Liens. Filed December 6, 1966

Eunice Janousek, a principal judgment creditor, has given no release of her judgment and lien in the $50, 000 judgment against Weldon A. Price . . . The motion to pay a small part of the $12,000 owed Miss Janousek into Court, and asking the Court to enter satisfaction on a final, valid and subsisting judgment in return for a small partial payment on it -- a motion based in its entirety on the Galiher-Neyland-Price-Detwiler unilateral, self-proclaimed "release" of Miss Janousek's judgment for her -- is filed irresponsibly . . (pages 1 and 2) The judgment debtor's motion asks the Court to enter satisfaction of a judgment for less than the amount due . . . Taking his own computation -- in which he gives himself an unallowable credit of $7, 250 -- the judgment debtor does not even then propose to pay the full amount of Miss Janousek's judgment and interest. Under his own computation he is attempting to pay $1, 500 less than the amount due. Illustrating, using the judgment debtor's computation:

Miss Janousek's judgment - 20% of $50, 000	$ 10, 000. 00
Interest from July 29, 1963 to Dec. 1, 1966	2, 000. 00
Total	$ 12, 000. 00
Credits taken under judgment debtor's computation ($7, 250 plus $240. 88 to Neyland)	7, 490. 88
Due Miss Janousek under judgment debtor's computation	$ 4, 509. 12
Amount on which judgment debtor asks the Court to enter satisfaction of judgment	3, 009. 12
Deficiency still owed on Miss Janousek's judgment	$ 1, 500. 00

Actually the amount presently due on Miss Janousek's judgment is $12, 000, with $240. 88 to Neyland, and in moving to pay $3, 009. 12 into Court, the judgment debtor asks the Court to exercise a power it does not have and arbitrarily show satisfaction of a judgment on which $8, 750 would continue due and unsatisfied.

Illustrating this, using the computation actually governing:

Miss Janousek's judgment - 20% of $50,000	$ 10,000.00
Interest from July 1963 to December 1, 1966	2,000.00
Total	12,000.00
Partial payment of $3,009.12 on judgment, proposed by judgment debtor and $240.88 to Neyland	3,250.00
Deficiency still owed on Miss Janousek's judgment	$ 8,750.00

With wearisome repetition the present Price motion tries again to disregard Miss Janousek's vested independent lien and judgment of $10,000, and interest, and her unassailable right to collect it independently -- factors already established in prior proceedings and by rulings and orders of this Court in this case . . . (and) attempted in the face of such decisions as Falcone v. Hall (1956), 98 U.S. App. D.C. 363, 235 F2d 860. Besides asking this Court to decide points in an appeal now pending, the present Price motion seeks preposterously to have this Court override Falcone v. Hall, and other governing decisions of the Court of Appeals binding on this Court -- not to mention similar decisions of the United States Supreme Court and numerous state appellate courts (citing cases). As the present Price motion requires rulings on matters now before the Court of Appeals and to be adjudicated there, the appellate decision and judgment will will govern this Court's future disposition of it . . . It is therefore respectfully submitted that the motion of Weldon A. Price to pay money into court, etc. be dismissed for want of jurisdiction, or stayed pending return of jurisdiction to this Court by the United States Court of Appeals. Eunice Janousek.

* * * *

Supplemental Opposition to Motion of Weldon A. Price for Leave to Pay Money Into Court, for Release of Judgment, etc. — Filed February 1, 1967

Since December 6th, when the memorandum of "Points and Authorities in Opposition to Motion of Weldon A. Price for Leave to Pay Money into Court and for Release of

Judgment and all Liens: was filed in this Court, there have been several procedural occurrences bearing upon the judgment debtor's post-appeal motion.

In this supplemental memorandum, these are being brought to the Court's attention for they underscore the irregularity of the judgment debtor's motion filed in this Court on November 29, 1966 while jurisdiction was, and is, in the Court of Appeals, and while the appeal is in progress on the very points the motion endeavors to raise in this Court; a motion the judgment-debtor-appellee Price asks this Court to pass on while an appeal is in progress, which would constitute rulings on precisely the legal questions and issues presently before the Court of Appeals for determination.

I

First, on December 20th, as authorized by the Court of Appeals, the appellant's (Miss Janousek's) Supplementary Brief and Appendix were filed in that Court. A copy of the Supplementary Brief is attached to this memorandum as Exhibit 1. It further shows that the judgment debtor's motion in this Court asks this Court to usurp appellate jurisdiction by deciding questions that are identical with those in this appeal. Only one or two of them need be mentioned to illustrate . . . (pages 1, 2)

The motion to pay money into Court and enter satisfaction of Miss Janousek's judgment lien is made on a "release" made between the adversary parties (the appellees Price, Galiher and Neyland), without her knowledge, purporting to "release" her judgment lien for her for a fraction of the amount due her under her judgment lien. The motion calls upon this Court to decide that Miss Janousek does, or does not have, an independent lien, with independent rights of execution and enforcement of her lien; calls upon this Court to construe and decide whether this case is governed by Falcone v. Hall, 98 U.S. App. D.C. 363, Sullivan v. Tobin, 42 App. D.C. 430, Kellogg v. Winchell, 51 App.D.C. 17, Continental Casualty Co.

v. Kelly, 70 App. D.C. 320, and other decisions of the Court of Appeals uniformly holding that attorney-lienors and judgment-lienors (the latter of which is exactly the appellant's status) have an independent property interest in the judgment and a right to proceed independently with its collection. These are the questions and matters of law the appellee Price now calls upon this Court to act on in error, to predetermine and decide them when they are precisely the questions awaiting decision by the appellate court in one phase of the appeal. This Court is respectfully referred to Supplementary Brief for Appellant, pages 1-8, and Brief for Appellant, pages 4-15, where they appear.

The present post-appeal motion before this Court asks this Court arbitrarily to enter satisfaction of Miss Janousek's judgment and lien for $3,009, when the actual amount due her, with interest to January 29, 1967, is $12,100. Again the basis of this request is the sham "release" conjured up on November 4, 1966, while this appeal is pending, reciting a "release" of Miss Janousek's judgment lien for her. In this request the motion also calls upon this Court to act in error and predetermine legal questions of consideration and estoppel presently before the Court of Appeals for decision and which, when determined will fix the amount due Miss Janousek on her judgment lien and interest owed her by the judgment debtor Price. This Court is respectfully referred to the Supplementary Brief for Appellant, pages 8-12, and to the Brief for Appellant, "Statement of Questions Presented," following index page, where these issues in the appeal appear.

These are but two instances of a motion filed while an appeal is pending, flouting jurisdictional rules that are basic, flouting voluminous federal decisions prohibiting the very things they ask this Court to undertake in error for them to aid them in their repeated and strenuous efforts to circumvent the appeal and avoid appellate consideration.

II

The appellees have also filed three motions to dismiss the appeal in the Court of Appeals, all denied by the Court. They have, indeed, made the motion presently before this Court (i.e. the motion to pay money into Court, satisfy judgment liens, etc.) the basis of their third motion to dismiss the appeal -- denied by the Court of Appeals on January 13, 1967.

Though they came before this Court on December 29th trying to say their motion here is unconnected with the appeal, (Opposition to Motion to Stay District Court Proceeding During Appeal, Filed December 29, 1966), viz.:

> -- "The issues presented by this Defendant's Motion for Leave to Pay Money Into Court is unrelated to the issue on appeal which deals solely with Eunice Janousek's right to proceed for collection of her alleged claim." --

their representations were just the opposite to the Court of Appeals on their third motion to dismiss the appeal. To their motion in the appeals court they attached the sham "release" contrived between themselves on about November 4th, "settling" the appellant's judgment lien for her for $3,009.12, stated to the Court that this amount was being paid to her under a motion they had filed in the District Court to pay it into the Court's Registry, and that as the "settlement" and the "release" had rendered the appeal moot, it should be dismissed.

The appellant's objections to the third motion to dismiss the appeal -- particularly since the Court of Appeals has since dismissed the motion -- are especially applicable to their post-appeal motion in this Court, appending the "release" on which they urged dismissal of the appeal. The objections were these:

> "In objecting to the third motion of the appellees to dismiss the appeal, the appellant respectfully states that it is as lacking in substance, groundlessly and unnecessarily filed as the first two which the Court has previously denied.

"Nothing whatsoever has occurred in the District Court -- or outside the Courts -- pending this appeal that in any way resolves, affects or influences any of the errors specified, or the orders appealed, or the questions and issues on them in this appeal -- much less anything that renders them "mute," as appellees' current motion puts it.

"The appellees through Weldon A. Price have come into the District Court while this appeal is in progress asking the District Court to order a discharge of Miss Janousek's judgment lien of $10,000 against Weldon A. Price, plus interest of $2,000 to December 1, 1966, for the sum of $3,009. It attaches a "release" of appellant's judgment lien for her -- a paper of which appellant was not even aware, much less bearing any signature or consent from her, until it arrived, appended to the District Court motion with which she was served on November 30, 1966.

"The motion calls upon the District Court to rule upon the very questions that are before this Court in this appeal. These facts are set out in the memorandum of Points and Authorities appellant has filed in the District Court in opposition to the motion. She respectfully appends a copy of that memorandum to these objections, marked Exhibit 1, for this Court's information.

"In their motion in the District Court, and by their third motion to dismiss the appeal in this Court, they decline to abide by the District Court's orders fixing Miss Janousek's judgment and lien at 20% of the $50,000 judgment against Weldon A. Price. They decline to abide by the District Court's later order rejecting their repetitious contentions that the appellant has no status, or interest, or right to collect the judgment lien of $10,000 plus interest, which is hers. They decline to abide by this Court's rulings in Falcone v. Hall, 98 U.S. App. D.C. 363, 235 F2d 860, and the earlier decisions upon which that case rests. They decline to abide by the fact that this case is on appeal, and that these are matters and issues all before this Court in the errors specified in this appeal. And they decline to abide by the fact that the rules require their filing of briefs in response to these matters for appellate determination, and not successive motions to dismiss the appeal.

"Representations to this Court that something has occurred to affect or change the orders of June 13 and 28, 1966 now on appeal have no foundation whatever.

"The appellees continue to contend that appellant has no interest, judgment or lien, and no right to collect what the judgment debtor Price owes her. And the judgment debtor continues to enjoy complete freedom and non-payment of the judgment under the injunctive order of June 29, 1966, now on appeal, that is as effective at this moment to bar the appellant from executing on and collecting the twenty percent of the $50,000 judgment Weldon A. Price owes her as it has been from June 28th when they prevailed on the District Judge to enter that order on the stay contract they pleaded against the appellant. (S) Eunice Janousek" (Filed in Court of Appeals on December 16, 1966.)

The Court of Appeals, as stated above, denied the third motion to dismiss the appeal on January 13th.

There is presently before this Court the appellant's Motion to Stay District Court Proceedings Pending Appeal. It is respectfully submitted that proceedings in this Court should be stayed as prayed in that motion, and that the Motion of Weldon A. Price to Pay Money Into Court and for Release of Judgment and All Liens should either be dismissed or stayed until the issues that motion raises, presently issues and questions pending before the Court of Appeals, are determined by the appellate court. Respectfully submitted, (S) Eunice Janousek.

* * * * *

Order (staying District Court proceedings) Filed February 3, 1967

On February 3, 1967, when the motion of the judgment debtor to pay money into court, etc. and the motion of appellant to stay the District Court proceedings came on for hearing, an order was entered on the latter motion (Judge Matthews), staying proceedings in the District Court until disposition of the appeal now pending. The order was consented to, marked "Seen and agreed" and signed "Robert L. Ellis, Atty. for Price."

* * * * *